KASHMIR
Legal Documents

Source:

KASHMIR
CONSTITUTIONAL HISTORY AND DOCUMENTS

Mohan Krishen Teng
Ram Krishen Kaul Bhatt
Santosh Kaul

Light & Life Publishers, 1977

Page Intentionally Left Blank

Kashmir: Legal & Historical Documents

Second Edition, *January 2006*

Contents

page

Contents v
1 Introduction 1-2
2 Treaty of Amritsar 2-3
3 Letter of Governor-General to Gulab Singh 3-5
4 Lawrence to Jawala Sahai 4-6
5 Governor-General to Gulab Singh 5-7
6 Officer on Special Duty to Foreign Secretary 6-8
7 Government of India to the Secretary of State for India 7-9
8 The Secretary to State for India to The Government of India 8-11
9 The Secretary of State to The Government of India 9-12
10 Kharita from the Viceroy to the Maharaja of Jammu & Kashmir 10-14
11 Kharita from the Viceroy to the Maharaja of Jammu & Kashmir 11-15
12 From Partap Singh to the Viceroy 12-16
13 Durbar Proclamation 13-17
14 Partap Singh's Address in Durbar 14-18
15 Partap Singh's Address in Durbar 15-19
16 The Indian Mirror 16-20
17 Report on the affairs of the State of Jammu & Kashmir by the Resident of Kashmir. 17-21
18 Kharita from Partap Singh to the Viceroy 18-23
19 Kharita from Partap Singh to the Viceroy 19-25
20 Kharita from Viceroy to Maharaja Partap Singh 20-26
21 Government of India to the Secretary of State 21-28
22 Secretary of State to the Government of India 22-29
23 Secretary of State to the Government of India 23-30
24 Irshad of Maharaja Partap Singh, Edict of Abdication 24-31
25 Irshad of Maharaja Partap Singh, Edict of Abdication 25-32
26 Instruction from the Government of India to the Resident in Kashmir 26-33
27 From the Resident in Kashmir to Raja Amar Singh, Prime Minister, Kashmir 27-34
28 Lord Lansdowne to Maharaja of Kashmir 28-35
29 Constitution of the State Council 29-38
30 Administration of Justice in Kashmir State 30-40
31 Kashmir under the British Administration 31-42
32 Resident to Amar Singh 32-45
33 State Council Supplementary Rules of Business 33-47
34 State Council Supplementary Rules of Business 34-48
35 Restoration of Powers to Maharaja Pratap Singh 35-49
36 New Arrangements for the Administration of Kashmir by Resident in Kashmir 36-52
37 Transactions of Business of the Council Memorandum Maharaja Pratap Singh 37-54
38 Letter from Chief Minister Jammu and Kashmir State to Maharaja Pratap Singh 38-55
39 Regulation No. XLVI Jammu and Kashmir State Civil Courts Regulation 39-57
40 Sri Pratap Reforms Regulation Reserved Subjects 40-59
41 Sri Pratap Reforms Regulation No. IV of 1922 41-60
42 High Court Code of Civil Procedure 42-61

43 Constitution of Jammu and Kashmir State Council....43-62
44 Constitution of Jammu and Kashmir State Council....44-68
45 State Subject Definition Notification....45-74
46 Jammu and Kashmir Government Notification Order No.1....46-76
47 Statement of Maharaja Hari Singh on Butler Committee....47-80
48 Statement of Maharaja Hari Singh, Round Table....48-81
49 Presidential Address of Dr. Sir Muhammad Iqbal....49-82
50 Proclamation of Maharaja Hari Singh....50-86
51 Report of the Kashmir Constitutional Reform Conference....51-88
52 Report of the Franchise Committee....52-98
53 Constitution Act, 1934....53-111
54 Jammu and Kashmir Praja Sabha Election Rules....54-117
55 Order to Convene the first Session of the Praja Sabha No 57....55-120
56 Vernacular names for the Ministers order No. 99....56-121
57 Appointment of Ministers to Praja Sabha Order No. 132....57-122
58 Appointment of Official Members to Praja Sabha Order No. 133....58-123
59 Inaugural Address of the Maharaja to the Praja Sabha....59-124
60 Resolution of the Working Committee of the Indian National Congress....60-126
61 Presidential Address of Sheikh Mohamad Abdullah, Muslim Conference....61-127
62 Resolution of the Working Committee Muslim Conference....62-128
63 National Demand....63-129
64 Resolution State's People's Conference, Ludhiana Session....64-131
65 Pandit Jawaharlal Nehru's remarks in treaty rights of Princes....65-132
66 Jammu and Kashmir Constitution Act....66-133
67 Jammu and Kashmir Praja Sabha Rules of Business and Procedure....67-148
68 Board of Judicial Advisors Procedure Rules....68-156
69 Pakistan Resolution of the Lahore Session of the All India Muslim League....69-157
70 Mr. Jinah's Demand for a Seperate Homeland for Muslims....70-158
71 Broadcast of Sir Stafford Cripps, Delhi....71-160
72 Statement of Maharaja Hari Singh on Cripps Mission....72-161
73 Resolution of the Working Committee of the Indian National Congress....73-162
74 Resolution of the Working Committee of the All India Muslim League....74-163
75 Resolution on the 'Unity of India' passed by the All India Congress Committee....75-165
76 Cripps Mission from the Marquess of Linlithgow to Mr. Amery....76-166
77 From Maharaja Jam Saheb of Nawanagar to Sir H. Craik....77-167
78 Cripps Mission....78-170
79 Cripps Mission....79-172
80 Resolution of the Indian States Delegation....80-174
81 Cripps Mission....81-175
82 Naya Kashmir....82-176
83 Jinnah's Address to Muslims of Jammu and Kashmir....83-182
84 Resolution of the Working Committee of the Indian National Congress....84-183
85 Resolution of the Working Committee of the National Conference....85-184
86 Telegram from Sheikh Mohammad Abdullah to Cabinet Mission....86-185
87 Dyarchy Appointment of Popular Ministers....87-186
88 Dyarchy Mirza Beg to Rai Bahadur Ramchander Kak, Prime Minister, Jammu....88-187

89 Rai Bahadur Pt. R.C. Kak, Prime Minister Jammu & Kashmir State to Mirza Afzal Beg. 89-190
90 Mirza Afzal Beg, Minister for Public Works to Rai Bahadur Pt. R.C. Kak, Prime Minister, Jammu and Kashmir State, ... 90-193
91 Rai Bahadur Pt. R.C. Kak, Prime Minister, Jammu & Kashmir to Mirza Afzal Beg..... 91-198
92 Mirza Afzal Beg to R. Kak, Prime Minister, Jammu and Kashmir 92-200
93 R.C. Kak, Prime Minister, Jammu and Kashmir to Mirza Afzal Beg 93-201
94 Mirza Afzal Beg to R.C Kak, Prime Minister, Jammu and Kashmir 94-202
95 R.C. Kak, Prime Minister, Jammu and Kashmir to Mirza Afzal Beg 95-203
96 Dyarchy Statement of Sheikh Mohammad Abdullah 96-204
97 Sheikh Mohd. Abdullah's Statement on the Ministerial Crisis in the Kashmir State 97-206
98 Resolution Working Committee All Jammu and Kashmir National Conference on the Treaty rights claimed by the Princes 98-207
99 Statement of Sheikh Mohammad Abdullah on Indian States 99-208
100 Presidential Address Kisan Conference 100-209
101 Quit Kashmir speech of Sheikh Mohammad Abdullah 101-211
102 Telegram from Provincial National Conference Committee Jammu to the Viceroy and Maharaja of Kashmir 102-212
103 Statement of Sheikh Mohammad Abdullah before the Sessions Court, Srinagar ... 103-213
104 Resolution: Congress Working Committee on Kashmir 104-215
105 Statement of Mirwaiz Moulvi Yousuf Shah on Congress Working Committee Resolution 105-216
106 Press Statement: Chowdhry Hamidullah Khan President Jammu and Kashmir Muslim Conference 106-217
107 Statement of Acharya Kriplani, Congress President at Mujahid Manzil, Srinagar . 107-218
108 Resolution Congress Working Committee on States 108-219
109 Resolution Kisan Mazdoor Conference 109-220
110 Resolution of Kashmir Socialist Party 110-222
111 Kashmir-Pak Standstill Agreement 111-223
112 Telegram from Foreign Secretary, Government of Pakistan, Karachi, to Prime Minister of Jammu and Kashmir 112-224
113 Maharaja's Accession Offer to India 113-225
114 Instrument of Accession of Jammu and Kashmir State 114-227
115 Acceptance of Instrument of Accession of Jammu and Kashmir State 115-229
116 Reply from Lord Mountbatten to Maharajah Sir Hari Singh 116-230
117 Chief Secretariat (General Department) Emergency Administration Order No. 176-H of 1947 117-231
118 Emergency Council 118-232
119 Proclamation of Shreeman Indar Mohinder Rairajeshwar Maharajadhiraj Shree Harisingh Ruler of Jammu and Kashmir and Dependencies 119-233
120 Proclamation Government Gazette 120-234
121 Resolution National Conference 121-235
122 Text of the Proclamation issued by the Head of the Jammu and Kashmir State 122-236
123 Speech Of the Hon'ble Sheikh Mohammed Abdullah in the Constituent Assembly..... 123-237

124 An Act further to amend the Jammu and Kashmir Constitution Act, 1996..... 124-244
125 Memorandum submitted by Shri Cheewang Rigzin, President Buddhist Association, Ladakh to the Prime Minister of India on behalf of the people of Ladakh..... 125-249
126 Interim Report of the Basic Principles Committee..... 126-252
127 Resolution moved by Durga Prasad Dhar..... 127-254
128 Resolution of the Constituent Assembly pertaining to the Head of the State..... 128-255
129 Report of the Drafting Committee..... 129-257
130 Bill to amend the Constitution Act..... 130-258
131 Sheikh Mohammad Abdullah's Statement to the Constituent Assembly on Delhi Agreement..... 131-261
132 Joint Memorandum submitted by Cabinet Members of the Sheikh Abdullah Ministry to the Sadar-i-Riyasat..... 132-266
133 Sadar-i-Riyasat's letter to Sheikh Abdullah..... 133-268
134 Order Issued by the Sadar-i-Riyasat..... 134-269
135 Sadar-i-Riyasat's letter to Bakshi Ghulam Mohammad..... 135-270
136 Bakshi Ghulam Mohammad's reply to Sadar-i-Riyasat's letter..... 136-271
137 Report of the Basic Principles Committee..... 137-272
138 Report relating to Citizenship and Fundamental Rights..... 138-275
139 Report of the Drafting Committee..... 139-279
140 The Jammu and Kashmir Constitution (Amendment) Act..... 140-280
141 The Constitution of Jammu and Kashmir, 1956..... 141-283
142 MISCELLANEOUS DOCUMENTS..... 142-307
142.1 Claim over Laddakh..... 142-307
142.2 Letter from Maharaja Hari Singh to Lord Mountbatten on the eve of Pak invasion on J&K in 1947..... 142-308
142.3 Indian Complaint to the Security Council Letter Dated January 1, 1948 from the Representative of India to the President of the Security Council (S/628)..... 142-310
142.4 Letter of the Maharaja Hari Singh to Sardar Patel..... 142-314
142.5 U.N. RESOLUTION..... 142-317
142.6 Agreement between Military Representatives of India and Pakistan regarding the establishment of a Cease-fire Line in the State of Jammu and Kashmir..... 142-319
142.7 Text of Memorandum submitted by 14 Muslim leaders of India to Dr. Frank P. Graham, United Nations Representative..... 142-322
142.8 ARTICLE 370 OF THE INDIAN CONSTITUTION..... 142-326
142.9 Sino-Pakistan Frontier Agreement..... 142-327
142.10 Tashkent Declaration..... 142-330
142.11 Simla Agreement..... 142-332
142.12 Kashmir Accord..... 142-334
142.13 Parliament Resolution..... 142-336

1 Introduction

Contrary to claims made by Kashmiri secessionists and their sympathizers, there is no legal ambiguity about the accession of Jammu and Kashmir state to India. At the time of independence from Britain in 1947, the more than 500 principalities that formed the Indian dominion had the option to join India or the newly formed Pakistan, or declare themselves an independent state. The principality of Jammu and Kashmir was invaded by Pakistan to force its king Maharaja Hari Singh to join Pakistan. In face of the open aggression the king decided to accede to India. This accession was supported and ratified by Sheikh Mohammed Abdullah the leader of National Conference, the largest political in the state which had mobilized the masses against the autocratic rule of the king. As part of the agreement of Jammu and Kashmir's entry into the Indian Union, a special status was given to the state which was enshrined in the Article 370 of the Indian Constitution. A list of documents that provide further details is given below.

2 Treaty of Amritsar

March 16, 1846

Legal Document No 1

The treaty between the British Government on the one part and Maharajah Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's most Honorable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharajah Gulab Singh in person - 1846.

Article 1

The British Government transfers and makes over for ever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

Article 2

The eastern boundary of the tract transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

Article 3

In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st October of the current year, A.D., 1846.

Article 4

The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government.

Article 5

Maharajah Gulab Singh will refer to the arbitration of the British Government any disputes or question that may arise between himself and the Government of Lahore or any other neighboring State, and will abide by the decision of the British Government.

Article 6

Maharajah Gulab Singh engages for himself and heirs to join, with the whole of his Military Forces, the British troops when employed within the hills or in the territories adjoining his possessions.

Article 7

Maharajah Gulab Singh engages never to take to retain in his service any British subject nor the subject of any European or American State without the consent of the British Governnent.

Article 8

Maharajah Gulab Singh engages to respect in regard to the territory transferred to him, the provisions of Articles V, VI and VII of the separate Engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

Article 9

The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

Article 10

Maharajah Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve shawl goats of approved breed (six male and six female) and three pairs of Cashmere shawls.

This Treaty of ten articles has been this day settled by Frederick Currie, Esq. and Brever-Major Henry Montgomery Lawrence, acting under directions of the Rt. Hon. Sir Henry Hardinge, Governor-General, on the part of the British Government and by Maharajah Gulab Singh in person, and the said Treaty has been this day ratified by the seal of the Rt. Hon. Sir Henry Hardinge, Governor-General.

Done at Amritsar the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubee-ul-Awal (1262 Hijri).

(Signed) H. Hardinge (Seal)
(Signed) F. Currie
(Signed) H. M. Lawrence

3 Letter of Governor-General to Gulab Singh

January 7, 1848

Legal Document No 2

(Extract)

Your Highness is aware of the principle by which the British Government is guided in its treaties with Eastern Princies where cessions of territory are involved that whilst it will scrupulously fulfill all its obligations for the protection of its ally, it never can consent to incur the reproach of becoming indirectly instrument of the oppression of the people committed to the Prince's charge.

If the aversion of the people to a Prince's rule should by his injustice become so miserable as to cause the people to seek his downfall, the British Government are bound by no obligation to force the people to submit to a ruler who has derived himself of their allegiance by his misconduct.

In no case, will the British Government be the blind instrument of a Ruler's injustice towards his people and if inspite of friendly warnings, the evil of which the British Government may have just cause to complain be not corrected, a system of direct interference must be resorted to which as Your Highness must be aware would lower the dignity and curtail the independence of the Ruler.

4 Lawrence to Jawala Sahai

January 14, 1852

Legal Document No 3

(Extract)

On account of certain excesses committed by some European Visitors in the past year, I intend to appoint some responsible European official at Srinagar to stay there till the return of the said visitors in order that he may put a stop to the occurrence of such excesses. As the Maharaja is well acquainted with the good intentions and sociability of Major MacGregor, I wish he may be allowed to stay at Srinagar till the end of the hot season to supervise the conduct of European visitors to Kashmir. As this arrangement is also for the benefit of High Highness, it is hoped that it will be gladly accepted by High Highness**.**

5 Governor-General to Gulab Singh

September 26, 1873

Legal Document No 4

(Extract)

In view of the important position of Your Highness's territories on the north-western frontiers of British India, the increasing importance attached to political affairs in Central Asia, the necessity of obtaining early and reliable information of all that takes place beyond the Himalayan passes, the mischief caused by the circulation of false and exaggerated rumours from those quarters, and the close relations which will, His Excellency in Council trusts. be established with Yarkand, it appears to His Excellency in Council to be advisable that a British Resident should remain permanently at the Court of Your Highness. This alteration of the present arrangements is made for reasons relating to the external relations of British India, and the Viceroy has no intention of interfering more than heretofore in the internal affairs of Kashmere.

6 Officer on Special Duty to Foreign Secretary

December 9, 1882

Legal Document No 5

(Extract)

It may not be worth while to alter the designation of the Officer on Special Duty, though his present designation is cumbrous and absurd. His duties are not special but the ordinary duties of an Agent or a 'Charged' Affairs'. But there is no magic in the word 'Resident'. Whatever the Maharaja may think, and I am not aware that the powers of a Resident as such are anywhere strictly defined, they would probably vary with the degree of control exercised by the Paramount power. I myself am of the opinion that 'Agent to the Governor-General' would be more appropriate designation and one less likely to terrify the Maharaja and as High Highness has a Vakil or Agent with the Governor-Generalhe would hardly be astonished that the Governor-General should have a Vakil or Agent with him. No matter what the Officer is called, his position should be strengthened, in justice to him and to the Darbar.

7 Government of India to the Secretary of State for India

April 7, 1884

Legal Document No 6

(Extract)

The three principal facts which it is necessary to notice are that the death of the Maharaja Ranbir Singh is apparantely near at hand; that the administration of the Kashmir State is so thoroughly disorganised as to threaten a complete breakdown; and that the heir-apparent to the Chiefship is said to be unfitted in character and habits to govern the State. The first two of these facts we have unfortunately been in a position to anticipate for a long time past. The Maharaja has been suffering for years from a moral disease; while the recent famine afforded convincing proof of the corruptness and inefficiency of the administration of Kashmir. We have also heard from time to time unsatisfactory accounts of the heir-apparent, and it has of late been reported that his father entertained some idea of setting him aside by a testamentary disposition. In our judgment, the time has now come for determining the course which the British Government should adopt on the death of the Maharaja; and we therefore proceed to lay our views before your Lordship.

Turning first to the question of the succession to the present Chief, we are of opinion that the eldest son, Mian Pertab Singh, should be proclaimed at once when his father die. We do not consider that we can take congizance of the vices attributed to Pertab Singh unless they have reduced him to a condition of actual incapacity which does not appear to be the case; nor do we think that in this matter we should be justified in attaching any weight even to the wishes of His Highness Ranbir Singh. For the general interests of peace and good order among the Native States, no encouragement should be given to the idea that an eldest son can be set aside at the with of his father; and we hold that in practice nothing but the clearest evidence of actual incapacity to rule should be allowed: to stand in the way of a regular succession by order of primogeniture. Further we are entirely opposed to permitting any partition of the Kashmir State, by will or otherwise, among the three sons of the present Chief. Feeling confident that our opinion upon these points are in accord with established policy, we have anticipated your Lordship's orders by issuing the instructions necessary for-the guidance of Lieutenent-Colonel Sir Oliver St. John, K.B.C.I., the Officer on special Duty, ire case of an emergency arising. In the meanwhile we do not think it desirable formally to announce to the Maharaja that a will affecting the succession could not be recognised, because this course might raise unpleasant discussions. But the Officer on Special Duty will avail himself of any good opportunity for intimating to His Highness that such a will would not be expedient.

On the succession of the new Chief, it will not, in our opinion, be proper to postpone any longer representation of our views upon the necessity for introducing substantial reforms into the administration of Kashmir. The misgovernment to which the people of that country have long been subjected was some time since prominently brought to our notice by Mr. Henvey. We did not take action at once, conceiving that a more favourable opportunity would present itself on the occurence of a fresh succession-an event which seemed unlikely to be long postponed. When that event takes place, we consider that it will be our duty to impress upon the Kashmir Government its obligations to its own subjects, and to see that the reforms which are so urgently needed are no longer postponed. With this view we would propose, immediately on the occurence of the next succession, to inform the Maharaja, that we regard the present state of affairs as most unsatisfactory and that substantial reforms are required. We would if possible lead the new Government to propose the measures necessary to give effect to this altered policy, but we should require that their execution should be entrusted to competent hands. While firmly insisting upon necessity for a change, we should avoid any direct interference with administrative details.

We are, however, sensible that, if our advice is to be effectual, it may be necessary to alter the present arrangement under which our representative remains in the Maharaja's territory for a portion only of the year. Such a change would probably be welcomed by the people of Kashmir; and as it would not be introduced until after the death of Maharaja Ranbir Singh, his feelings in the matter would be fully respected. It is a measure which may be called for, not merely by the need for assisting and supervising administrative reforms, but also by the increasing importance to the Government of India of watching events beyond the North-Western frontier of Kashmir. Any disturbances which continued misgovernment might create in Kashmir, would be actually felt on the frontiers of Afghanistan; the connection between Kashmir and its dependent Chiefships would in all probability be served; and grave political complications might easily ensue. We have therefore to consider the necessity for providing for efficient political supervision, not merely in the interests of the people of Kashmir, but also in the interests of the people of India. Under these circumstances we are anxious to obtain from Her Majesty's Government authority to appoint, if it should appear to us necessary, at any time after the death of the present Maharaja, a Resident political officer, who will exercise a general supervision over the affairs of the Kashmir State. We do not propose that this officer if appointed by us, should hold any actual position in the government of the State, nor do we think that it would be necessary to give him special powers in the province of Kashmir. It will suffice if he occupies, with regard to Jammu and Kashmir, the position and powers ordinarily given to a British Resident in a feudatory State.

The British Government are not debarred by any engagement express or tacit, from posting a political Officer permanently in Kashmir; and we see no reason why an arrangement which has been accepted without demur by such a State as Hyderabad should not be adopted in regard to the Kashmir State. If this view is correct, the only question which arises is, whether existing circumstances do not render it desirable to give us the authority we seek.

8 The Secretary to State for India to The Government of India

May 23, 1884

Legal Document No 7

(Extract)

(2) **In** anticipation of the death of Maharaja Ranbir Singh which is believed to be near at hand, your Excellency in Council has had under consideration (l) the course to be adopted in regard to the succession; (2) the measures which should be taken on the commencement of a new reign, in order to secure reforms in the administration of the State; and (3) the expediency of a change in the existing arrangements for the representation of the British Government at the Maharaja's Court.

(3) Your Excellency in Council is of opinion that any attempt on the part of the Maharaja to exclude his eldest son from the succession should be discouraged, and that Mian Pertab singh should be proclaimed immediately on his father's death; you propose to require from the new ruler substantial reforms in the administration, and to insist upon their execution being entrusted to competent hands; and you request from Her Majesty's Government discretionary authority to appoint, at any time after the death of Maharaja Ranbir Singh. a British Resident in Kashmir, with the position and powers ordinarily given to such an officer in a feudatory State.

(4) While I regret to receive so unfavourable an account of the character of the Maharaja's heir, I agree with your Government in regarding as inexpendient any deviation in the case Excellency's of Kashmir from the regular succession by order of primogeniture, or any partition of the State, by will or otherwise, among the three sons of the present Chief. I approve therefore, of the instructions in accordance with this view, which I understand to have been sent to the Officer onSpecial Duty in Kashmir.

(5) As to the urgent need of reforms in the administration of the State, there is, unfortunately, no room for doubt. It may, indeed, be a question whether, having regard to the circumstances under which the sovereignty of the Country was entrustd to the present Hindu ruling family, the intervention of the British Government on behalf of the Muhamadan population has not already been too long delayed; but, however this may be, Her Majesty's Government are satisfied that' upon a fresh succession, no time, should be lost in taking whatever steps may be requisite in order to place the administration upon a sound footing.

(6) The same occasion would, in the opinion of Her Majesty’s Government, be a suitable one for introducing a change in the present arrangement under which your Excellency's representative remains in Kashmir for a portion only of the year.

(7) In 1845 it was decided not to appoint a political officer to reside permanently at the Maharaja's Court, whilst in 1873, when the measure was recommended by Lord Northbrook's Government, the necessity for it did not seem to Her Majesty's Government to be so clearly established as to justify them in disregarding objections which were expressed by authorities entitled to respect. But in the interval which has since elapsed, circumstances have greatly changed; and whether regard be had to the condition of the country, to the character of the Prince into whose hands the Government will shortly pass, or to the course of events beyond the course of events beyond the border, which has materially increased the political importance of Kashmir, the appointment which you request a discretionary authority to make appears to be not only desirable but necessary. Your Excellency in Council Isis therefore, at liberty to proceed in the matter as you may think proper at any time after the death of Maharaja Ranbir Singh**,** taking care meanwhile that strict secrecy is observed as to your intentions.

9 The Secretary of State to The Government of India

August 1, 1884

Legal Document No 8

(Extract)

In case of Maharaja Ranbir Singh's death, his eldest son, Mian Pertab Singh, will succeed to the undivided Chiefship the new Maharaja will be called upon to introduce such reforms as many seem to be necessary; and a Resident Political Officer will be stationed in Kashmir. It remains to inform you of the precise steps which the Governor-General in Council desires you to adopt for earring out these arrangements.

So long as Maharaja Ranbir Singh is alive, the Government of India do not propose to make any change in their exiting policy. His Highness should be quietly dissuaded, if he refers to you on the subject, from executing any testament in favour of the partition of his territories; but it will not be necessary for you to make any formal communication to His Highness upon this matter, or to travel beyond existing practice in recommending to him administrative reforms, or other desirable measures. You should abstain from any allusions to the subject of changes in the existing position of the officer on special Duty in Kashmir, and you should avoid as much as possible - anything which is calculated in the Maharaja's present state of health unnecessarily to disturb his mind. It is of course desirable that you should use your influence, as far as you can, even during the life of the Maharaja, for the improvement of tile condition of Kashmir; but the Governor-General in council wishes to treat His Highness with the utmost consideration and, as any substantial reform would probably involve a very unpalatable degree of interference with his proceeding, it will be sufficient if, during the remainder of his life, you can perserve the administration of the State from any material change for the worse.

If at any time Maharaja's death should appear to be very near at hand, you should make arrangements to join His Highness at Jammu, or wherever he may then be, and to prevent, by disorder occurring. If his illness should unfortunately terminate fatally, you should take the earliest opportunity of announcing that the Viceroy is pleased to recognize the succession of Mian Pertab Singh to the Chiefship, and you should formally install the new Chief on the gadi of Jammu and Kashmir.

At the same time you should inform His Highness, and the members of his Durbar, of the views and intentions of the British Government in regard to the future administration of the State. You should give them clearly to understand that His Excellency the Viceroy regards the existing conditions of affairs in Kashmir as most unsatisfactory; and you should warn His Highness and those about him that substantial reforms must be introduced without delay. You should then announce that, with the view of aiding His Highness in the introduction and maintenance of those reforms, the Viceroy has decided to give His Highness the assistance of a resident English officer, and that for the future the British representative in Kahmir will have the same status and duties as the Political Residents in other Indian States in subordinate alliance with the British Government.

It is important, in order to avoid uncertainty and the risk of disorder, that this announcement of the intentions of the Government should take place without delay, and that they should clearly and fully understood both by the Maharaja and by all others concerned when he is installed. The recognition and installation of the new Chief should be as prompt and formal as posssible, and nothing should be omitted that can have the effect of assuring His Highness of the good-will of the British Government, but, while treating the Maharaja with utmost friendliness and courtesy, you cannot speak too plainly in regard to the Viceroy's views and intentions.

Immediately after the news of Maharaja Ranbir Singh's death reaches the Government of India, a letter addressed by His Excellency the Viceroy to the new chief will be sent to you for delivery. A draft of this letter is enclosed for your information. When you receive the signed copy of this draft or before you

receive it, if the ceremonies connected with the change of rulers should afford you an opportunity of speaking earlier, you should invite the Maharaja to indicate the reforms which he may consider it necessary or desirable to introduce; and you should ask His Highness to inform you of his views with regard to the persons whom he would propose to place in charge of the administration. It will not be expedient to bring in a Minister from elsewhere if a sufficiently well qualified local candidate can be found; and as far as possible the Governor-General in Council would wish to leave the Maharaja free to form own Government. Any proposals, therefore, which His Highness may put forward on this subject will be tentatively accepted, unless you should see decided reason to object to them as holding out no prospect of success.

You will notice that the draft letter to the Maharaja impresses upon him the necessity for consulting you fully at all times, and following your advice. You should therefore not hesitate to offer your advice freely whenever N'OU may think it desirable to do so; the more particularly because owing to the peculiar conditions under which the Maharaja will succeed to the Chiefship, it will be necessary that his administration should for a time at least be closely supervised; the condition of Kashmir must be thoroughly reformed, and the Governor-General in Council cannot allow this object to tee frustrated by any obstruction or procrastination on the part of the Durbar.

I am now to enumerate, for your information and guidance, the principal measures of reform which appear to the Governor-General in Council to be necessary after any arrangements required for the immediate alleviation of distress, if distress exist, have been adopted and carried out. In the opinion of the Governor-General in Council those measures are: the introduction of a reasonably light assessment of land revenue, collections being made in cash if on examination this seems to be a suitable arrangement; the construction of good roads; the cessation of State monopolies; the revision of existing taxes and dues, especially transit dues and the numerous taxes upon trades and professions; the abolition of the system of farming the revenue, wherever the system is in force; the appointment of respectable officials, if such exist, and their regular payment in coin; the removal of all restrictions upon emigration; the reorganization and regular payment of the army; and the improvement of the judicial administration. In order to afford the Maharaja all possible help in the introduction of such reforms, the Governor-General in Council will if necessary grant High Highness a loan from Imperial revenues, and will also be willing to place at his disposal, for a time, the services of any officers of the British Government who may seem specially qualified to assist the new administation in carrying out the measures contemplated. Such assistance seems to be more particulary required with regard to the revision of the settlement and the construction of roads. The pay of any officers transferred must, however, be found by the Kashmir State.

With reference to the relations existing between Kashmir and the State upon her northern border, the Governor-General in Council does not think it necessary at present to issue any detailed instructions. The question is an important one, and will require your close and constant attention. You should be kept accurately informed of all movements of troops and other noteworthy occurances in the direction of the frontier, and you should be prepared to advise Maharaja Pratap Singh freely on all matters of frontier policy. But at present the Governor-General in Council has no special instruction to give you on this subject.

10 Kharita from the Viceroy to the Maharaja of Jammu & Kashmir

September 14, 1885

Legal Document No 9

(Extract)

I have received with deep regret the news of the death of your father, Maharaja Ranbir Singh and I wish to assure you without delay of my most sincere sympathy.

Maharaja Ranbir Singh rendered valuable service to the British Government. I feel that his loss is the loss of a friend and I wish that it had not fallen to me during the period of my Viceroyalty, to consider the measures rendered necessary by this unfortunate event.

It is now my duty to inform you, on behalf of the Queen Empress of India, that I recognise and confirm your succession to the Chiefship of Jammu and Kashmir. I trust that your Highness's life may be long and prosperous; and that, in all difficulties, of whatsoever kind, you will rely with confidence upon the good-will of the British Government, which will never fail you so long as you are loyal to the Crown and earnest in the desire to rule your State with justice and moderation.

Your Highness has before you a difficult task. During the illness of your father the administration of the State became seriously disorganised and it will be necessary for you to introduce many reforms. But my agent, Sir Oliver St. John, will remain with you and help you to the utmost of his ability; and I feel confident that with his aid all your difficulties will be successfully met and overcome. I request your Highness to refer to him for a more detailed explanation of my views regarding the future administration of the Kashmir State; and I hope that your Highness will not fail to consult him freely at all times, and to be guided by his advice in carrying those views into execution.

11 Kharita from the Viceroy to the Maharaja of Jammu & Kashmir

September 14, 1885

Legal Document No 9

(Extract)

I have received with deep regret the news of the death of your father, Maharaja Ranbir Singh and I wish to assure you without delay of my most sincere sympathy.

Maharaja Ranbir Singh rendered valuable service to the British Government. I feel that his loss is the loss of a friend and I wish that it had not fallen to me during the period of my Viceroyalty, to consider the measures rendered necessary by this unfortunate event.

It is now my duty to inform you, on behalf of the Queen Empress of India, that I recognise and confirm your succession to the Chiefship of Jammu and Kashmir. I trust that your Highness's life may be long and prosperous; and that, in all difficulties, of whatsoever kind, you will rely with confidence upon the good-will of the British Government, which will never fail you so long as you are loyal to the Crown and earnest in the desire to rule your State with justice and moderation.

Your Highness has before you a difficult task. During the illness of your father the administration of the State became seriously disorganised and it will be necessary for you to introduce many reforms. But my agent, Sir Oliver St. John, will remain with you and help you to the utmost of his ability; and I feel confident that with his aid all your difficulties will be successfully met and overcome. I request your Highness to refer to him for a more detailed explanation of my views regarding the future administration of the Kashmir State; and I hope that your Highness will not fail to consult him freely at all times, and to be guided by his advice in carrying those views into execution.

12 From Partap Singh to the Viceroy

September 18, 1885

Legal Document No 11

(Extract)

I have also to present my greatful thanks to your Excellency for the most welcome message conveyed to me on the 15th instant by Colonel Sir Oliver St. John, the Officer on special Duty in Kashmir7 that your Excellency has been pleased to recognise my succession to the gadi of this State, and I hose by the blessing of God to let Your Excellency have the satisfaction of learning before long that I am as fully alive to the undoubted and immense importance of conscientiously discharging my duties towards my subjects by doing all in my power to secure their best happiness, as 1 am awake to the supremely important duty of giving renewed proofs of loyalty to the British Government by following in the footsteps of my father and grandfather.

I do not hesitate to admit that the existing state of affairs in Kashmir and Jammu urgently requires immediate introduction of substantial reforms into the administration of the country, and now that I have power commensurate with my responsibilities, 1 beg to assure your Excellency that nothing shall be spared on my part, and no time will be lost to prove beyond any possibility of doubt that it is my ambition to succeed in making nay country a model of a well-governed State in alliance with the Government of India.

It has, however, pained me extremely to learn that exactly at the time when I have made up my mind to deserve and win your Excellency's approbation and encouragement by proving myself equal to the onerous and responsible duties of a good ruler, your Excellency has been thinking of changing the status of the British officer on special Duty in Kashmir to that of a political Resident, and thus lowering me in the eyes of my subjects and in the estimation of the public. It is fully known to your Excellency that I have only just now acquired the power of showing to the world that, without any interference from any quarter or any, the smallest, diminution of long enjoyed rights and dignity of this State, I am able and willing of my own accord to introduce and maintain such reforms as are calculated to entitle a rulers to the lasting gratitude of his subjects, and encouraging approbation of the paramount power as well as the public at large.

13 Durbar Proclamation

September 25, 1885

Legal Document No 12

(Extract)

(l) **The** custom of "khodkasht'`. This is a system by which the State farms a part of the village lands itself. Advances are annually made to the persons employed for the purpose, but it is notorious that they embezzle the money, and cultivate the land with forced labour, and seed extorted from the villagers.

(2) The custom of "leri". This is a system of paying sepoys and others by remission of rent, instead of in coin and, for some reason not easily explained, is much disliked.

(3) Each group of ten houses in Jammu territory will no longer as before, be obliged to supply one Sepoy or other Government servant; forcible enlistment generally is abolished; and the role of obliging families to provide substitutes for deserters in done away with.

(4) The customs duty on rice and other provisions brought into Srinagar for sale is reduced from two annas in the rupee to half an anna, in other words from 12 1/2 to 3 l/8 per cent.

To understand the severity of this tax it must be explained that Government itself is the principal grain dealer, and fixes a permanent rate at whicl1 grain is sold. Thus the rate for unhusked rice in Re. 1-4 (English) per kharwar, equivalent to about 10 annas a man. If a Zemindar sends rice to market, he can ask no more for it than 10 annas a man, and has in addition to pay the customs contractor l l/4 Anna before he can offer it for sale. Under these conditions it is clear that the remission of three-fourths of this tax will benefit the producer, and not the ccr.sun or, who will pay the some price for his rice as before.

(5) The next impost remitted is also in favour of Zeminder. Every large village community in Kashmir comprises a "Zillahdar," or "Harkara," whose business it is to report the misdeeds of his fellows. The Durbar affect to look on these officials as rural police; but as they are occasionally women, and have no

powers beyond reporting, spies would be a better name for them. They are paid by a cess of I 1/2 per cent on the gross produce of the land. Some years ago it occurred to Wazir Punna that the Zillahdars were making too much money, and he therefore made their chief, the Harkara-Bashi (head-bringer of news) pay an annual sum to the treasury. This has been raised till it now amounts to 60,000 Chilki rupees (37,500 English) a great deal more than the estimated total value of the cess from which it is supposed to be paid. This most obnoxious impost is now abolished, but the Zillahdars are warned that they must continue to send in reports, and that if found extorting any thing beyond the legitimate 1 112 per cent they will be punished.

(6) The tax on the sale of horses in Kashmir, called "Zari-nakas", which at one time amounted to 50 per cent of the purchase money, is abolished.

(7) The tax on "Ekhas" playing for hire to Sailkot, which amounted to Re. 1-11 on a total of Rs. 2-10 annas is abolished, and some other minor dues are remitted.

14 Partap Singh's Address in Durbar

September 25, 1885

Legal Document No 13

(Extract)

SIR OLIVER ST. JOHN, SARDARS AND GENTLEMEN.

(1) My hearty and cordial thanks are due to his Excellency the Viceroy, and his worthy representative and my sincere friend, Sir Oliver St. John, for the kharita recognising my succession to the Chiefship of this large and important State, and I take this fitting opportunity to declare publicly, that of the many ardous and responsible duties which I shall have to perform as the ruler of this State, the foremost under all circumstances will be the duty of following in the footsteps of fray illustrious grand father and the lamented Highness, in giving substantial proofs of unswerving and devoted loyalty to Her Imperial Majesty's Government, and, when the necessity will arise, of placing all the resources of my country at the disposal of His Excellency the Viceroy and of personally joining the British army with the whole of my military force.

(2) Next in importance to my obligations to the paramount power, but next to those only, will be the duty of governing my country with justice and moderation. The responsibilities which I an; going to undertake will be high and heavy indeed, but 1 believe God will grant me firmness and strength enough to discharge them witl1 credit to the family of my renowned ancestors, and benefit to the lakhs of subjects whom it has pleased providence to place under my care

(3) I have before me the difficult task of introducing substantial reforms in the administration of the country, but I believe I have only to look the difficulties boldly in the face and show a determined front, to achieve complete success and earn the reputation of a just and good ruler. Armed with purity of intentions and firmness of purpose, I may reasonably entertain the hope of being able to clear the administrative agency of all corruption and incompetency, and impart to it the maximum of honesty and efficiency. I now warn my officials of all ranks that I have fully made up my mind to put down corruption and intrigue wherever they may be found, and I hope they will do all in their power to help me in making administration a blessing and a source of unmixed good to my people.

(4) I know that the paramount power as well as the public will watch with interest the progress and development of my measures of reform, and I am fully alive to the fact that they will estimate me not by the pomp and splendour of my court and retinue, but by the amount of happines, that I may secure to my subjects.

(5) I need not trouble you now with minute details of what I intend to do, but I think I can declare without committing myself to any particular measure the policy and the general principles that will guide me in the conduct of my affairs. I shall adopt such measure only as are calculated to secure to my subjects their greatest good and the fullest enjoyment of their rights and privileges, and shall conduct my administration so that the tiller of the soil will enjoy a fair share of the produce of his labour and the manufacturer of his skill and industry, that every facility will be given to commerce by improving the means of communication and removing unnecessary and vexatious restrictions, that every encouragement will be offered to get all the resources of the country properly developed, that adequate measures will be taken to give my subjects the benefits of sound and useful education, that ample provision will be made for the relief of the sick and the suffering, and that real merit and worth in my subjects will be recognised and fostered without any distinction of race or rank, creed or colour.

15 Partap Singh's Address in Durbar

October 19, 1885

Legal Document No 14

(Extract)

The demise of the late Maharaja Ranbir Singh was announced to your Lordship by telegram on the 12th September and the papers now enclosed will acquaint Her Majesty's Government with the steps we have taken to carry out the policy approved by Lord Kimberley's despatch, dated the 23rd May 1884. The succesion of Pertab Singh, the eldest son of the deceased Maharaja, to the undivided Chiefship of Janice and Kashmir has been recognised and confirmed. The position of political officer in Kashmir has been placed on the same footing with that of Residents in other Indian States in subordinate alliance with the Government. The attention of the new ruler has been drawn to certain measures of reforms which we consider essential to remedy the longstanding misrule in His Highness's territories. At the same tirade Maharaja has been assured that we desire to leave The initiation of these measures in his hands, to abstain from unnecessary interference in his affairs, and to allow him all legitimate discretion and a liberal period of time for the execution of a work which is as difficult as it is necessary.

16 The Indian Mirror

October 5, 1886

Legal Document No 15

The settlement of the Anglo-Indian-Cashmere means, in our opinion, the practical annexation of that State to the British Empire and as the presence of the Bangal is not very favourable to the quiet development of this scheme of annexation, their immediate departure and future exclusion from that State have really become a necessity of the situation … we do not know how far the Maharaja is to blame in respect to this affairs. Our own apprehension is that much pressure has been brought to bear on His Highness to compel the resignation of the Bengali officer in his State. These Bengalis are always thorn on the side of the foreign office and the officers of the political department and as the foreign office is evidently revolving some plans in regard to Kashmir that will not bear exposure to light, the removal of the Bengalis from position of influence in the State, necessarily considered the first step toward the accomplishment without disagreable friction. The death of the old Maharaja was most unfortunate at this moment, and an the present ruling Prince very greatly needs advice and, guidance, the reported exodus of the Bengalis from Cashmere is the more to be regretted In course of time, too as Cashmere is to be shortly connected with British India by an extension of our Railways system. The Govt. may think fit to remove its summer residence from Simla to the "Happy Valley."

For no better place can possibly be selected for the purpose... It has been a veritable Naboths Vine Yeard, at which our Govt. has always been casting wistful eyes, longingly and lingeringly, and now under the plea of guarding India from Russian invasion, it is sought to colonise that territory with Anglo-Indians as a preliminary step, we believe, to its absolute annexation afterwards. The settlement of Kashmir with Anglo- Indians cannot fail to be followed up with the almost immediate absorp tion of the State …. We pity the lot of poor Cashmere and its Maharaja, and the present policy of Lord Dufferin in regard to that State is very much to be condemned. Lord Dufferin may imagine or plead, as we found him to do in regard to upper Burma, that he is justified by grave political reasons but such repeated acts of high-handdness will, we are afraid, lead to serious and unexpected disasters in the end. The Russian progress towards India may be put forward as an excuse for the present policy in connection with Cashmere, and, in trying to avert or remove danger, immediate peril is courted.

17 Report on the affairs of the State of Jammu & Kashmir by the Resident of Kashmir

March 5, 1888

Legal Document No 16

(*Extract*)

I have had more opportunities of studying the Maharaja's character than perhaps any other officer in the country. My intercourse with him, official, private, and social, has boon frequent; my relations with him have been always friendly, there has never been any friction or tension between us. He has never failed in personal courtesy to me, nor ever refused to see me at any time or on any occasion; therefore I can fairly say that I am not actuated by any feelings of personal dislike tow-arcs His Highness.

I think, however, that the Government of India should be under no illusion as regards Maharaja Pertap Singh. From first to last I have failed to discover in him any sustained capacity for governing his country, or any genuine desire to ameliorate its condition, or to introduce those reforms which he has acknowledged to be necessary. More than two years have passed since his accession, but not only has he achieved nothing, but he has opposed beneficial measures proposed by others. The progress made has been in spite of him. I do not believe he is loyal, but fortunately he is powerless to carry his country with him. And I am convinced that the Government will commit a serious mistake if it believes that the reforms which the country urgently needs will ever be effected by Maharaja Pertap Singh. He will never, of his own free will, establish a capable and honest administration: nor, if any power of interference is left him, will he permit any administration appointed by the Government of India to carry on the business of the country. He will thwart and oppose it in every way he dares; the only restraint will be the limit of his powers and his fears; therefore I do not earnestly advise that the Maharaja be made plainly to understand that he has had his chance, and that he will not be allowed any longer to stand in the way. I would assign him a liberal income, to be placed at his absolute disposal, and treat him with full honour as titular Chief, but I would exclude him from all real power. He may reign, but not govern. A great danger with the

Maharaja is that his notorious weakness of character and purpose render him and easy tool in the hands of an unscrupulous adviser, and therefore it is essential that he should be controlled by some agency upon which the Government of India can place confidence. I consider that a reduction of the Maharaja's authority on these lines is an essential condition precedent to all other necessary measures.

Next, as to the form of Government. One plan is to appoint Raja Amar Singh Prime Minister, on condition of his undertaking to carry out in all respects the policy of the Government of India. He has not got sufficient experience or solidity of character to execute a task of this magnitude without the aid of a resolute and experienced adviser, and it would be necessary to constitute some such office as "Secretary to Government", and to nominate to it a suitable British Officer Native or European. I have great doubts whether Raja Amar Singh can be trusted, and, unless he has strong officer at his elbow to keep him straight, I do not think it would be safe to employ him. He has never forgotten his father's intentions on his behalf, and the object he is working for is to become Maharaja of Kashmir. Once he gets power into his own hands he will use it without scruple to attain this end. At present the Maharaja is friendly to Raja Amar Singh, because he wishes to Break the bond which unites the two younger brothers and Diwan Lachman Das, but there is no genuine affection or confidence between them; and the well-known fact that the Late Maharaja would have liked to supersede Partab Singh in favour of his youngest brother, is a special cause of jealousy. And I Should expect that, after a short time, all the influence which the Maharaja possesses, especially Zenana influence, would be brought to bear against Amar Singh. Another probable result of his elevation would be a feud between him and his brother Ram Singh, thereby raising against him another hostile party.

Another plan is to bring in a Prime Minister from elsewhere. There is no one in the Maharaja's employ fit for the post, and the selection would need particular care. The situation is this: no Native could administer

the affairs of Jammu and Kashmir unless he is not only the exceptionally strong Character but also exceptionally honest; and, in any case he would require besides the full support of the Government of India. If a weak man is chosen he will succumb to local intrigue, notwithstanding all the support which tile Government may give him; and, if he is not honest, he will yield to the temptations with which the place abounds, and go with the swim. But, if a Native Minister is brought in from outside, I recommend precautionary measures being adopted with the Young Rajas. I should order each of them to take up his residence in his own Jagir, and so occupy the same position as. Raja Moti Singh of Punch. It is not right that these young men should be given large jagirs which they never visit. It ought to be a condition of the grant that they reside on their property and be personally responsible for its administration. They might pay yearly visits to Jammu just as Moti Singh does. Another good result of this measure would be to lay ther foundation of class such as exist in the Rajput States. As long as Raja Ram Singh continues to command the State Army there is no hope of any serious-reorganisation; and if Raja Amar Singh were to remain at Jammu, he would not leave a stone unturned to render the Prime Minister's position untenable.

A third plan is to continue the existing Council, Making the Resident its temporary head and strengthening it by the addition of two selected Natives. An administration so constituted would probably be strong enough to introduce all needful reforms, and to set the country in order. Three years would suffice to set things straight, and the Resident might then withdraw from the headship of the Council, and an administration be established on ordinary Native lines.

I believe that, sooner or later, the Government will have tot choose one or other of these three plans or some modifications of them. But, whatever plan is adopted, there is one measure which must under any circumstances be prescribed. This is, first, the immediate removal of the band of incompetent corrupt, and mischievous men who are at the bottom of most: of the intrigues by which this unfortunate State is torn; and, secondly, the appointment of an adequate number of trained. native officials on reasonable salaries who can be trusted, to carry out the orders given to them. Until the entire Kashmir establishment has been recast, and honest and competent servants substituted for the fraudulent and incapable men now employed, no reforms can be carried out, nor can any mere alteration of the Government be of any use.

18 Kharita from Partap Singh to the Viceroy

April 13, 1888

Legal Document No 17

(*Extract*)

Your Excellency is already aware that circumstances obliged me to dismiss Diwan Lachman Das, Prime Minister and President of the Council. As I think that the Council which was formed with your kind advice should be continued, I have prepared a scheme for its reorganization which I beg to forward herewith to your Excellency.

I beg to express the high consideration and esteem I entertain for your Excellency and to subscribe myself, etc.

JAMMU & KASHMIR COUNCIL

CONSTITUTION

(l) The Council shall consist of a President, Vice-President, three members, and a Secretary.

(2) His Highness the Maharaja shall be the President.

(3) Highness shall appoint a Vice-President, Members and a Secretary.

(4) Three shall form a quorum.

(5) The Vice-President, Members, and the Secretary may be removed and substituted by majority of votes of the Members of the Council, for reasons to be recorded.

(6) The Council shall be a consultative one.

APPOINTMENT OF MEMBERS

(7) The Raja Amar Singh is hereby appointed VicePresident and Raja Ram Singh and Babu Nilambar Milkers Members, with Diwan Janki Prasad, Member and Secretary.

(8) The Members shall represent the 'following branches of administration:

(i) Military - Raja Ram Singh.

(ii) Judicial and Foreign Department - Raja Amar Singh.

(iii) Revenue - Babu Nilambar Mukerji.

(iv) Miscellaneous - Diwan Janki Prasad.

9. The Vice-President shall also be the Prime Minister with executive powers.

10. The Vice-President and Members shall take the following oath: -

"I solemnly declare that in giving my opinion as a Member of Council, I shall keep in view the best interests of the State, and shall freely express my honest convictions, without fear or favour, and I shall not divulge any secrets of the State."

BUSINESS

11. The Council shall sit three days in the week, authorised holidays excepted, and any extraordinary meeting shall be held, on the requisition of the Prime Minister.

12. It shall be the duty of the Council to legislate and hear and pass opinion on all subjects that may be brought forward by the Members.

13. The Council shall, on meeting, frame rules for its guidance, which may be removed or modified by it only.

14. All matters shall be decided on majority of votes.

15. Besides the matters which may be brought forward in the Council by the Members, the Prime Minister, who is the head of the Executive Government under His Highness, may refer to the Council for opinion all important questions affecting the administration in all its branches.

16. The respective opinions of the several Members shall be recorded and signed.

17. When a Member brings forward, or the Prime Minister refers, any special matter to the Council, it shall be the duty of the Secretary to furnish all the members with a written statement of the subject matter.

18. The office establishment shall be considered and settled by the Council on meeting.

19 Kharita from Partap Singh to the Viceroy

July 25, 1888

Legal Document No 18

(*Extract*)

The Government of India have decided to accept in principal the scheme which His Highness has put forward, and your own alternative proposals have for the present been set aside. In coming to this conclusion the Governor-General in Council has not overlooked the fact that the Maharaja's Scheme is open to many objections and that partly on account of His Highness's personal character and partly for other reasons, it is not unlikely to prove a failure. But before sanctioning any measures which would have the effect, directly or indirectly, of taking all power out of the Maharaja's hand, the Government of India have felt that it would be just and right to allow the Maharaja a further opportunity of showing whether he is competent to discharge the duties of a responsible ruler. If after full and fair trial it becomes evident that he is wholly incapable of conducting the administration of the State the proposals which you have submitted will be reconsidered.

In the meantime I am to ask you to afford the Maharaja every assistance in your power with regard to the reorganisation of his Council and all other matter upon which he may consult you. The Governor-General in Council does not desire you to press upon him your own views as to these matters. You should understand that the responsibility for the success or failure of the present experiment will rest upon the Maharaja, and your aim should be to meet his wishes in every possible mender, not refusing your advice when His Highness asks for it, but avoiding any course of action which might prevent him from feeling that the Government of India desire to allow him the fullest opportunity of proving his fitness. You should help His Highness as much as possible in doing this, but you should not insist upon the advantage of any measure which he disapproves, however desirable it may seem to be in his own interests.

You will notice that the Government of India have declined to permit the employment of Babu Nilambar Mukerji as member of Council in charge of the revenue administration. If the Maharaja should raise the question of employing him in any other capacity, you may inform His Highness that the Government of India do not consider it desirable that the Babu should return to Kashmir. With reference to the question of principle where the Maharaja is at liberty to employ Native British subjects without the consent of the British Government, you should give His Highness to understand that the interpretation of the treaty of 1846 with regard to this point is no longer open to discussion. The Government of India desire to give the Maharaja all possible assistance, and he trill always find them willing to place at his disposal the services of competent British Officials; but they must maintain their right to be consulted before any British subjects receive employment within the State.

The enclosed kharita points out to the Maharaja the urgent necessity for a thorough examination in to the condition of tine Kashmir finances. This is evidently a point of the greatest importance, and you should use your influence to bring it to the special notice of His Highness and his advisers.

20 Kharita from Viceroy to Maharaja Partap Singh

July 25, 1888

Legal Document No 19

(*Extract*)

I have received your Highness's letter of the I Seth of April, informing me of the dismissal of Diwan Lachman Das, and forwarding, for my consideration, a scheme which you have prepared for the re-organisation of your Council.

Your Highness's letter has received my most careful attention, and I have now to inform you of the conclusions at which I have arrived with regard to the very important questions which you have been good enough to refer to me.

in the first place, 1 cannot avoid informing your Highness that the news of the sudden removal of Diwan Lachman Das was received by me with some surprise. Your Highness appointed him to your council after consulting me, and I hoped that your Highness would, before making another change of Governments give me some previous intimation of your views. However, this point has already been brought to your notice by Mr. Plowden and I do not now desire to dwell upon it any further.

With regard to your Highness's scheme for the future administration of Kashmir, I would ask you to consider the following observations.

Your Highness proposes that the administration should be conducted or assisted by a council consisting of a President, .a Vice-President, three other members, and a secretary. The presidency you would retain in your own hands. You would appoint your brother Raja Amar Singh to be Vice-President, and you would also make him Prime Minister with executive powers. The other three members of the Council would be Raja Ram Singh, Babu Nilambar Mukerji, and Diwan Janki Prasad; and they would be charged respectively with the control of affairs in the military, revenue, and miscellaneous departments. The Prime Minister would have special charge of the judicial and foreign departments. Diwan Janki Prasad would be Secretary in addition to his other duties. It is proposed that the Council should be consultative.

It appears to me that a Government constituted in this manner is open to some criticism. In the first place, I am inclh1cd to doubt whether it is altogether in accordance with your Highness's dignity to be President of the Council. Secondly. your Highness's brothers are still young, and have had little opportunity of acquiring practical experience in administrative work. Babu Nilambar Mukerji has no knowledge of revenue matters, and is altogether unfit to take charge of so important a department of the administration. Of Divan Janki Prasad l know little, but I understand that he is not a man of marked character and ability. Under these circumstances your Highness's scheme does not appear to me to hold out any certain promise of success.

Nevertheless, I do not desire to raise any objection to the principle of the proposed arrangements. I regard your Highness as the responsible ruler of the State, and I wish to meet your views as far as possible, and to afford you every assistance in carrying them out. If, therefore, your Highness prefers to maintain a Council and to assume the presidency yourself. I . m ready to assent to your views in this matter, and also with :regard to the nomination of your brothers and Diwan Janki Prasad. On one point only I feel that in your Highness's interests I must ask you to modify your proposals. I cannot think that the appointment of Babu Nilambar Mukerji as Revenue Minister would be desirable. I am of opinion that for the charge of revenue affairs your Highness should secure the services of some thoroughly competent of official with practical experience of administration. I also think that at least one other official of similar qualifications should be appointed to direct, either as member of Council or in some capacity, the judicial and executive branches of your Government. If your Highness can name any Native Officials in the British Service who seem to me to possess the requisite qualifications I shall be glad to place them at your disposal. If your Highness cannot suggest any names I shall be ready and willing to make inquiries, and to supply you with the best men available either in the Punjab or elsewhere. I have learnt with pleasure that your Highness

has already asked for the services of some four or five officers to be employed in the accounts and forest departments. But your Highness's government seems to require something more than the loan of a few subordinate officials. What is wanted is that you should associate with your principal officers two or three thoroughly trained and capable persons, who will be able to give your Highness effective aid in directing and controlling the main branches of the administration. I trust that your Highness will consider these suggestions and will take such steps as may have the effect of strengthening your government from an administrative point of view. I need hardly add that, with regard to this question and to all other questions of importance. Your Highness should freely consult the Resident, who will give you every assistance in his power.

In making these observations I do not overlook the fact, that, since the appointment of the Council of which Diwan Lachman Das was a member, considerable progress has been made in the direction of reforms useful work has been done with regard to the revenue administration, and in the reorganization of the Public Works and Medical Departments. But much remains to be done, and it is because I am deeply conscious of the importance of the Kashmir State, and of the responsibilities of the British Government in regard to it, that I have so carefully examined the proposals which your Highness. has put forward.

I would particularly urge upon your Highness's attention the necessity for a careful investigation into the condition of your Highness's finances, and of the executive and judicial services. Until these are placed upon a thoroughly sound footing it will be impossible to hope for any material increase in the prosperity of the State.

21 Government of India to the Secretary of State

August 18, 1888

Legal Document No 20

(*Extract*)

In March last Mr. Plowden thought the time had come when for the sake of the State, it was essential to erect some reduction of the Maharaja's authority. There is no doubt some justification for Mr. Plowden's estimate of His Highness's capacity to rule; but on the other hand, the condition of the State does not seem to demand at present such decided action as Mr. Plowden has suggested. We have, therefore, determined not to resort to measures which would have the effect, directly or indirectly, of taking the power out of the Maharaja's hands, and His Highness will now have another opportunity of showing under favourable circumstances whether he is capable of carrying on the administration.

22 Secretary of State to the Government of India

October 12, 1888

Legal Document No 21

(*Extract*)

1. **I** have perused with deep interest the papers regarding Kashmir affairs which accompanied your Excellency's letter of the 18th August, 1888. From them I learn that the instability of the several administrations to which Maharaja Partab Singh had entrusted the management of the affairs of his State since his accession in 1885 has much retarded the execution of the various reforms which have been repeatedly pressed on the attention of the Maharaja, and that, after the abrupt dismissal of the president of the Council, Diwan Lachman Has, in March last, by the Maharaja, His Highness submitted for the consideration of your Excellency a scheme for the reconstitution of the State Council, in which the Maharaja proposed to assume the post of the President.

2. Though this scheme of administration is open to many objections, partly on account of the Maharaja's personal character, and for the other reasons, and is not unlikely to prove a failure your Excellency's Government have determined to allow His Highness a further opportunity of showing whether he is competent to discharge the duties of a responsible ruler.

3. Judging from the reports of the Residents in Kashmir. I can have little expectation myself that the experiment of a Council presided over by the Maharaja will be successful; but, on the other hand, the objections to any radical change in the government of the province at the present juncture are such that I am willing to sanction your proposal to give the Maharaja another occasion of proving whether His Highness possesses either the capacity or the will to introduce and carry into effect those administrative measures which are essential to the prosperity and security of the Kashmir State.

23 Secretary of State to the Government of India

February 17, 1889

Legal Document No 22

(*Extract*)

The day before yesterday I had placed in my hands such reliable evidence as l have said invariably to those who have talked to me, would alone satisfy me of the disloyalty or utter inbecility of the present Ruler of Jammu.

This consists of a batch of thirty-four letters in the Maharaja's own handwriting, some calf which are so compromising as to leave, I submit, no course open save his removal from the State, unless the alternative theory be accepted of his being a half-witted individual, irresponsible for his own acts.

Of their authenticity I have, myself, no doubt, and they are admitted to be in the Maharaja's own handwriting by his brother Raja Amar Singh; besides, a mass of letters like this are not likely to be forgeries in the way one or to might be.

But, side by side with these treasonable letters in this packet there are others in an utterly foolish strain, thereby confirming me in the conclusion I have unwillingly come to that, though with lucid intervals of good sense and propriety, the Maharaja is utterly incapable of being left in charge of his own affairs. The gist of these other letters is that the Maharaja offers large sums of money to certain individuals on condition that they will murder or cause to be removed, Plowden, the late Resident, his own two brothers, Ram Singh and Amar Singh, and one of the Maharanis, who, for some reason, is personally objectionable to him.

The conclusions the letters lead me to are confirmed by certain rather extraordinary acts of the Maharaja in appointing unworthy and incapable persons to important offices of the State, even since I took over charge, without consulting the proper counsellor, or, in fact, any one at all. The thing is the Maharaja is a timid and very superstitious man at the entire mercy of a set of unscrupulous scoundrels who take advantage of his fears and imbecility to pluder the State to any extent, and there appear to me weighty reasons for advising the practical setting aside of the Maharaja's authority.

It surely is politically dangerous to leave the actual administration of this great State in the hands of an individual who may play us false at any moment, without, perhaps appreciatin~ the disaster that would follow, and, I believe, any steps Government may take short of annexation will be right and necessary, and generally approved by the Princes and Chiefs of India.

Under the circumstances stated I think it is necessary for me to come to Calcutta at once on hearing from you, to talk the matter fully over with you, so that you may be in a position definitely to settle the future policy of Government towards the State.

24 Irshad of Maharaja Partap Singh, Edict of Abdication

March 8, 1889

Legal Document No 23

(*Extract*)

My dear brother Raja Amar Singh,

In the interests of the State' and for better administration of the country, and with a view to remodel it, as near as possible, on the English system, I hereby authorise a Council the members of which, for period of five years, will conduct all the public affairs of the State as they think best. The members will be as follows:

Raja Ram Singh and Raja Amar Singh,

An English member, specially selected by the Government of India on a salary Rs.2,000 or 3,000 per month.

Rai Bahadur Suraj Kaul and Rai Bahadur Bhag Ram.

This Council will have full and sole powers in all the public

Departments of the State for a period of hive years.

In the event of a vacancy occurring among the three last members during the prescribed period of five years the Government of India will be asked to nominate a new member.

After the expiration of the said period of five years the Maharaja will have the power of reorganising the administration if he finds it necessary to do so.

This period of five years will count from the date of this edict.

The Council will not interfere in any way with the private affairs of the Maharaja.

The Maharaja will continue to draw his monthly allowance for his privy purse as hitherto, no change whatever being made.

The jagirs and other grants of immoveable, movable property hitherto made by the Maharaja will hold good and the Council will not interfere.

All usual expenses connected with marriages and other family customs will be provided by the State.

Of my two brothers I will myself appoint one as President of the Council.

During the said period of five years the Maharaja will not interfere and will have no voice in the administration of the public affairs of the State, but he will continue to enjoy the honorary rights and position of Maharaja.

The Council have no power to alter existing treaties without the previous approval of the Maharaja. The Council will have no power to assign jagirs or immovable property of the State or to make new rules on such subjects without the consent of the Maharaja.

Signed and sealed by His Highness,the Maharaja

Seal of the ' State". On 27th Bhagan, 1945, - 8th March, 1889

25 Irshad of Maharaja Partap Singh, Edict of Abdication

March 13, 1889

Legal Document No 24

(*Extract*)

I serd you the original edict (with translation) and the official letter handed to me by the Maharaja of Kashmir containing His Highness application to be relieved of the management for a time of State affairs in order to redeem the past.

I trust this voluntary offer on his part may afford, with perhaps further conditions, an acceptable way out of no doubt a very acute difficulty.

As the Government of India have carefully refrained as long as was possible from any sort of interference in the direct management in the affairs of the Kashmir State, so I think now a direct appeal to do so cannot be ignored, and that there should be no hesitation in adopting the best and most complete measure likely to bring about the reforms necessary.

26 Instruction from the Government of India to the Resident in Kashmir

April 1, 1889

Legal Document No 25

(*Extract*)

I am to request you to inform the Maharaja that for a time at least he will be expected to refrain from al! interference in the Administration. He will retain his rank and dignity as Chief of the State; but full powers of government will be Vested in a Council consisting of the Maharaja's brothers and three or four officials selected by the Government of India.

It is not thought desirable that one of these officials should be an Englishman. The President of the Council will be Raja Amar Singh. Besides, retaining his rank and dignity the Maharaja will receive from the revenues of the State an annual sum sufficient to maintain his household in due comfort, and to defray any expenditure which may rightly devolve upon him; but he will have no power of allienating the State revenues, and the sum placed at his disposal, though adequate, must not be extravagantly large.

I am further to request you to make the Maharaja and the Members of the Council thoroughly understand that, although the Council will have full powers of administration, they will be expected to exercise those powers under the guidance of the Resident. They will take no steps of importance without consulting him, and they will follow his advice whenever it may be offered.

In communicating to the Maharaja and others concerned the decision of the Government of India? You should be careful to avoid basing that decision exclusively either upon the letters or upon the Maharaja's resignation. The letters are repudiated by the Maharaja and as 1 have said before they are not of a very novel character; while on the other hand the Government of India are by no means prepared to make the present settlement a matter of compact with the Maharaja, and to accept all the conditions laid down by his edict of the 8th March, for example the five year's limit. You should therefore base the decision of the Government upon a full consideration of all the circumstances, the letters and the Maharaja's wish to retire from the control of affairs being considered amongst other things, but only as portions of a difficult and complicated case, which it has been necessary to settle on broader grounds of general policy.

You should now proceed to work out fresh proposals upon the lines I have indicated. It will be necessary in the first place to define exactly the future position of the Maharaja, the amount of his annual allowance, the expenses which it is intended to cover, the extent of his powers over his own house hold, and generally the conditions which he will have to conform. It will also be necessary to show the proposed constitution of the Council the duties falling upon each of its members, and the method of transacting business. You should also ascertain the requirements of the State in the manner of subordinate officials, and should submit for the approval of the Government your views as to the steps to be taken for reorganising the administrative services. Informing those views you should remember that the Government of India has no desire to turn Kashmir into the semblance of a British district, or to place all administrative posts in the hands of Panjabi foreigners. The want of good native officials makes it necessary to import some trained men from the outside, but the men so imported should be kept as low as possible, and your object should be to form with their help a class of Kashmiri officials who will be capable hereafter of administering the State themselves. It is altogether against the wishes of the Government to interfere unnecessarily with the customs and traditions of a Native State, or to force upon it the precise methods of administration obtaining in British territory. Administrative efficiency is not the only object to be attained in such case, nor, indeed the principal object.

27 From the Resident in Kashmir to Raja Amar Singh, Prime Minister, Kashmir

April 17, 1889

Legal Document No 26

(*Extract*)

With reference to your No. 159, dated 8th March, 1889, 1 beg to inform you that the letter with its enclosures was laid before his Excellency the Viceroy and governor-general in Council, who, after full consideration of the circumstances and the general condition of affairs in the Kashmir State for a long time past, has ordered me to inform His Highness the Maharaja that for a time at least he will be expected to refrain from all interference in the administration. He will retain his Rank and dignity as Chief of the State, but full powers of Government will be vested in a Council consisting of the Maharaja's brothers and three or four officials selected by the Government of India. It is not thought desirable that one of these officials should be an Englishman. Besides retaining his rank and dignity, the Maharaja will receive from the revenues of the State an annual sum sufficient to maintain his household in due comfort and to defray any expenditure that may rightly

Devolve upon him, but he will have no power of alienating the State revenues, and the sum placed at his disposal though Adequate, will not be extravagantly large.

His Highness the Maharaja and the Members of Council should thoroughly understand that, although the Council will have full powers of administration, they will be expected to exercise those powers under the guidance of the British Resident. They will take no step of importance without consulting him, and they will follow his advice whenever it may be offered.

Such are the orders of the Government of India, and on my own part, I beg you will assure His Highness that it will be my endeavor to assist in carrying them out in the way I trust that may be most conductive to the happiness and benefit of His Highness and the State.

28 Lord Lansdowne to Maharaja of Kashmir

Letter from Digby to London Times

September 7, 1889

Legal Document No 27

(*Extract*)

Lord Lansdowne has recently done an exceedingly kindly thing in a characteristically pleasing way. What he has done will stand him in good stead as Viceroy of India. Nowhere in the world does a generous deed meet with so much appreciation as in India. Evidently moved by the many circumstances, pathetic and otherwise connected with the virtual deposition of the Maharaja of Kashmir, Lord Lansdowne, I am informed, has granted permission to the Maharaja to see him. This kindness has raised great hopes in the heart of the Maharaja and in the minds of his supporters. They argue, t is thought on good grounds, that the Viceroy would never have suggested the interview it is declared the suggestion came from above - unless he was prepared to do justice to the Maharaja as H's Highness understands that phrase. If Lord Lansdowne does not intend to restore Partab to his throne and reinstate him with the authority taken from him a few months ago, the kindness will prove to have been a mistake; the resulting disappointment will be most keen. It is not possible to overstate the excitement, which has been caused -throughout India by the Maharaja's deposition. Nothing that has happened in the Empire during the past thirty years has so vitally stirred Indians of all races, in every grade of society-this, too, in feudatory States and British districts alike. For the sake of peace and good-will in India and for better government and the increased security of our rule, it is earnestly to be hoped That a return to the status quo in Kashmir is contemplated by Lord Lansdowne and will shortly be arranged.

Lord Lansdowne, if-with such guarantees as the Maharaja has expressed his willingness to give for the good government of the people of Kashmir - he were to restore Partab Singh to his throne, would do not merely a kindly, but also an eminently wise thing. Notwithstanding what has been publicly said by an-ex India official, who ought to have known better, respecting the character of the Maharaja, His Highness is not 'a drunken debaucher ', nor is he a man of immoral life. He has never been in the habit of taking intoxicating liquors; he is singularly abstemious. He has led a simple life, and has carefully avoided sensuality. The only fault I have ever heard brought against him by any one acquainted at first-hand with his character is that the rites of the religion he believes in have had more influence over him than on his subjects or his co-religionists think right, but more than certain Europeans Approve, and that his devotions and his contemplation regarding a future life have taken up too much of his time. He is kind and indulgent and very affectionate. Instances were related to me while I was in India last year, illustrative of his great -thoughtfulness and goodness of heart. He has more than once been known to put himself to inconvenience rather than occasion additional trouble to those about him. So much for his character as a man. If he had only had fair play as good a record of the Maharaja as a ruler would by this time have been forthcoming. Partab Singh, a despotic sovereign, began his reign well. Here is a record of what was begun-very largely in many cases, entirely in others-on the Maharaja's own initiative. I mention only the more prominent reforms:

Payment of all civil and military salaries monthly instead of at irregular intervals, and thus avoiding accummulation of arrears

Abolition of export duties.

Abolition of numerous vexatious duties on manufacturers and traders.

Abolition of the harkarabeshi, the sewai, and other heavy taxes levied on the cultivators of the soil.

Stoppage of the inhuman practice of punishing the innocent relatives of deserters from the army when the deserters themselves could not be found.

Abolition of the pernicious practice of farming the land revenue by letting it to the highest bidder.

Abolition of the practice of buying ghee, horses, wool and other articles. through the revenue officials from cultivators, at nominal prices fixed by Government.

Abolition of the tax on Mohammedan marriages.

Increased allotment of funds for public works.

Stringent orders issued to prevent high officials and influential men influencing the decisions of Courts of Justice.

Equalization of the customs duty on salt.

Establishment of high schools at Jammu and Srinagar.

Municipal constitution granted to the cities of Jammu and Srinagar.

Equitable adjustment of import duties.

Leave Code, Educational Code, and other rules calculated to promote public interests provided.

Corruption checked among civil and revenue officials by the introduction of a system of strict supervision as well as by the importation of an honest and educated element in the service. And,

Amendment of certain laws.

Besides all these, a number of other reforms were taken in hand, and it was intended to press them with velour. Unfortunately, matters did not continue so excellently as they were begun, though they have always been fairly well conducted The fault is only a remote degree, if at all, lies with the Maharaja. The Residency system has been the bane of the Kashmir State, as it has been the bane of many another State in India. Let me show how this came about.

Partab Singh's accession was marked by a new departure in our relations with Kashmir. For the first time since Kashmir has been a feudatory of the British Crown, a Resident was appointed to the Himalyan Kingdom. The result was not satisfactory. Soon after Colonel Nisbet became Resident, a bundle of letters incriminating the Maharaja and making him a party to reasonable practices were handed to the Resident. He took them to Calcutta. Sir John Gorst, in the house of Commons, speaking the mind of the Government of India, as well as of the Secretary of State, declared no importance was attached to them. In the meantime by the exercise of what, the Maharaja himself in his letter to the Viceroy calls "many-sided pressures, a (so-called) letter of abdication was obtained from the Maharaja. On the strength of that document Partab Singh has been deposed. But not even the conditions of that communications have been carried out. The utmost that, under "many-sided pressures", the Maharaja would agree to was, that the assistance of the Government of India should be asked in the formation of a Council, over which Maharaja was to preside. This Council was to assist the Maharaja in carrying out needed reforms. Five Years was the limit set to this arrangement. The response to this proposal was a letter from the Government of India, informing the Maharaja that his offer has been accepted (!), he was to stand aside from all exercise of authority, the Resident was to become the Raja, and he was told an allowance, which was ungenerously described as sufficient for dignity but not for extravagance, would be made to him. No period was fixed for this arrangement to end. It might be As long as the sun and the moon endure", so for as the letter of (virtual) deposition was concerned. The Government of India say that the letter contains some inconvenient stipulations' and it would be embarrassing to it as it stands. As soon as the Maharaja saw the manner in which the offer extorted from him had been misinterpreted, he wrote a long letter to the Viceroy disclaiming the interpretation put upon what he said, and concluding by asking Lord Lansdowne, if he could not release him from the intolerable position in which he had been placed. to shoot him through the head. Death was preferable to the dishonor to which he had been subjected. Despite the Resident's efforts to detain him, the Maharaja left Srinagar and moved nearer to British territory to await the Viceroy's reply. That reply a telegram in The Times last week tells us, contains an expression of the hope of the Government of India that it may hereafter see its way to restore Partab Singh to his rightful position. Possibly the interview promised to the Maharaja may be the means of the bringing this about speedily. This incident, like scores of others affecting Indian Princes and their States, has happened, because the Government of India is in no way subject to that embodied conscience of present day

civilization-an enlightened public opinion possessing punitive power. Without meaning it, and doubtless working, as it considers, with a shingle eye to the maintenance of British supremacy in India, the Indian Foreign Office is frequently guilty of grievous injustice. That office, more than any other department in the Indian Government, is in a position which neither man nor institution is good enough, or free enough from liability to error, to bear. There is no one to call it to account, no over-zeal, no one to suggest one to check its (may be inadvertent) that there is, perhaps, another side to a matter than that which has fixed itself in the Foreign Secretary's mind; not a whisper is ever raised, or is likely to be ever raised, by any one possessing power in India, suggesting that the traditions of the office might with advantage be at times broken; it is prosecutor, judge, and executioner, in its hands an India Prince is between the upper and nether millstones. The healthy criticism, the more or less adequate knowledge, and the sense of responsibility to Parliament and the Press, which keep the Foreign, Home, and Colonial Departments in touch with the nation, and which prevent any gross injustice or wide deviation from righteousness are wholly wanting in India. They are not supplied by the British Parliament, the ultimate ruler of India. As a consequence, the Indian Foreign Office, without possibly knowing it and certainly in many instances without meaning it, has been and s responsible for a vast number of acts of injustice which, f set forth in detail, would hardly be credited. The Kashmir incident is one of these.

If it be true that Lord Lansdowne intends himself to see Maharaja Partab Singh, and to restore, with guarantees, the ruler of Kashmir to his place of power, His Excellency will do as much to strengthen the Queen-Empress's supremacy in India, as has been done by all the money spent during the past four or five years in strengthening the North-Western Frontier.

29 Constitution of the State Council

1889

Legal Document No 28

The Council will be composed as follows : Raja Ram Singh, Raja Amar Singh, Rai Bahadur, Pandit Suraj Koul, Rai Bahadur, Pandit Bhag Ram and such other members as may be added from time to time by the Government of India.

The Council shall appoint one of its members as Secretary.

Vacancies in the offices of Members of Council shall be filled up and the nomination of additional members shall be made by the Government of India.

The distribution of business among the members shall be regulated from time to time by orders passed in Council.

POWERS OF COUNCIL

Subject to the general control of the Resident, the Council shall be the final authority on all questions affecting the frontier relations of the State and its dependencies and in all matters appertaining to its internal administration.

The Members-in-charge of departments of the administration shall prepare a budget estimate of their respective departments for the final sanction and approval of the Council.

No legislative measures or schemes of general State reform shall be introduced except with the previous sanction of the Council.

The Council shall have power to veto or alter any orders passed by the Member-in-charge of the department in chambers and may call for and revise any proceedings in any department of the administration.

All appointments and removals of Gazetted Officers shall be made by order of the Council.

The Council may lay down special rules for the guidance of any department of the administration.

CONDUCT OF BUSINESS

The Council shall hold its sittings on such date and at such time and place as may be determined.

Two days before the meeting the Secretary shall prepare an agenda of the business to be laid before the Council and circulate the same among the Members.

Face Member shall at the same time be furnished as far as possible with copies of all the papers to be brought up at the meeting.

No motion when more than one Member present objects shall be laid before any meeting of Council for consideration until and unless it is borne on the agenda and a copy thereof supplied to each Member as provided in rules 12 and

Three Members shall form a quorum.

If a quorum is not formed the meeting shall be adjourned till such day as the Chairman may direct.

If within fifteen minutes of the hour fixed for Meeting Council, all the Members have not arrived those present may elect a Chairman, and proceed to transact business provided a quorum is present.

In emergent case Raja Ram Singh and Raja Amar Singh may convene a special meeting of Council and the rules herein before prescribed for ordinary meetings shall apply to such meeting.

All proceedings in Council shall be conducted in Vernacular. Every resolution as passed by a majority of votes shall be entered in detail in a minute book by the Secretary and before the close of the meeting the proceedings shall be read over to all the Members present and shall be signed by then provided that any

Member or Members dissenting from any resolution shall if they so desire cause their dissent to be recorded.

In English translation of the proceedings shall be forwarded without delay to the Resident for information.

The Resident shall be the final referee in all matters and may veto any resolution passed by the Council or suspend action thereon pending further explanation.

DUTIES OF SECRETARY

22. The Secretary shall:

Receive all papers submitted to the Council.

Prepare and circulate agenda of business and give due notice of meetings to the Members.

Call for information on matters to be brought up before the Council.

Supervise the working of the office and custody and maintenance of records.

Furnish each Member with copy of the proceedings of the Council.

Compile the administration report and returns.

Comply with requisitions made to him by the Members-in-charge of departments.

See that reports called for the Council are promptly sent for from departments concerned.

Conduct all routine business appertaining to his office.

23. The Secretary shall keep:

The seal of the Council.

Registers of all establishments employed in the State, amended up-to-date.

Budget estimates as sanctioned by the Council.

Check statements of Budget sanctions.

Register of supplementary Budget sanctions.

List of pending references.

Minute books of proceedings.

MISCELLANEOUS

If a member is unable to attend the meeting of the Council he shall notify the fact to the Secretary.

All proceedings of the Council unless otherwise directed by the Council shall by published in the Local Gazette.

The Council may frame subsidiary rules for carrying out the above provisions and for regulating other matters. falling within the scope of their authority.

30 Administration of Justice in Kashmir State

Note by Bhag Ram, Judicial Member of the Council

November 18, 1889

Legal Document No 29

I will avoid making any allusions to faulty procedure and technical drawbacks, instances of which are too numerous to mention, but I feel bound to state that, so far as my experience goes, the presiding officers of the Courts are as a class, generally, far from upright. Holding their appointments during. the pleasure of the Chief, they not uncommonly gave way to influence, in fact the dominant influence of the Maharaja's servants had so powerful an effect over the Courts, that on one occasion nearly three weeks after my arrival, Mian Sawal Singh sent word to me through a big official, asking me to let off a person sentenced to imprisonment by one of my Subordinate Judges. This however, was the first and the last attempt so far as I was concerned, as I took the opportunity then and there to announce publicly, that I shall be compelled to take very serious notice if such perversion of justice was again attempted. I had reason to believe that my action did not meet with the approbation of the Maharaja, and on a second occasion when His Highness himself spoke to me in regard to another criminal case, I told him that I could only decide cases. according to the dictates of my own conscience.

The presiding officers of Courts and judicial work performed by their clerks, and it has been with great difficulty that I have partially succeeded in getting them to record their proceedings in their hand. There are still a number of ignorant and illiterate Tehsildars and other officers, owing their employment to strong official influence, who would not and could not carry out by instructions.

I have come across cases, nay criminal trials in which a single line in the form of a judgement had never been recorded while instances have repeatedly come to my notice of Courts, neglecting the rudest principles of equity and jurisprudence, and putting suitors to all sorts of annoyance. Having had the honour to showing to the Resident a number of my decisions, bearing out the views expressed above, I hardly think it necessary to encumber this note with detailed particulars.

Judicial cases against private persons or State servants, interested in politics, or in the intrigues at Court, are as a rule kept pending or adjourned sine die, such postponement having the two-fold object of keeping the culprit in awe and chestising him on occurrence of a suitable opportunity.

During the ministry of Diwans Lachman Dass and Anant Ram, Judicial Courts could not work with a grain of independence or self-respect. Judges blindly disposed of cases, as required by the Ministers in power, without any reference to the merits, and not infrequently received written orders dictating decisions which were to be given.

Judicial officers, from corrupt motives, or to suit the interest of their employers, sometimes destroyed important papers and depositions, replacing them by false proceedings adapted to their judgements. To such an extent had the Courts lost public confidence that no party to a suit would credit them with original documents, and the pettiest case found its way to the highest Court, swelling law charges to the extent of double or triple of the amount claimed.

A curious custom prevailed, enabling private persons to make money by laying information exposing the conduct of State servants. Such complaints were called "Khair-Khwai" and were entertained by the Criminal Courts without any reference to the department in which the accused was employed. The officials, in a body, being addicted to misappropriation of monies received by them in the course of official duty, easily avoided investigation by bribing the informers, and the Darbar itself, not being well prepared to check corruption, or recover monies embezzled by its servants, such misappropriations were committed with impunity, so that as the present day there is hardly an official who, if a proper enquiry was instituted, would not have to account for his misconduct.

Receipts on account of unclaimed deposits and unclaimed property, as also fines and penalties, in certain cases, were seldom paid into the State Treasury. Judges of Sadar Adalats spent large sums without any

reference to higher authority. The other day I found that tile Nazir of tile Jammed Court has c large of items aggregating Rs.2500, extending over several years past, without having been brought to book in the finance accounts of the State. The same practice prevailed with greater impunity in other departments; the whole being due to the absolute want of a proper system of audit and control.

Tehsildars and other Revenue officers are known to be in the habit of imposing fines without recording any proceeding, and appropriating the receipts to themselves.

Execution of decree is tedious, and, as no civil case is held to be finally decided until it is confirmed in appeal by the highest tribunal, which generally takes seven to ten years, execution is generally stayed till then.

I will here say a few words regarding the laws in force. There is a Penal Code, but there is no Code of Criminal Procedure.

Similarly, there is a Code of Civil Procedure, but there is no substantive code of civil law, nor is there any law of limitation.

The stamp and registration laws are grossly imperfect.

My critical review of the State Penal Code was submitted to the Resident at Gulmarg. It is sufficient to show that the penal law is a wretched specimen of barbarity and oppression. It gives the Courts power to entertain complaints against witches and sorcerers, on payment of a fee of Rs.50. The cow is held in the highest veneration, and no punishment is spared, however faulty the evidence may be. When a person is shown to have put a cow to death, his lands and property are confiscated, houses are brunt, permanent exile is ordered, and whole families are ruined. If the charge is proved by evidence, the culprit is sentenced to imprisonment for life. A person is bound to be sent to jail if he happens to yoke a cow to the plough, or otherwise take excessive hard work from that animal. It is a penal offence to kill animals for food or sell meat on certain days in each month. Adultery with a widow is punished with great severity, particularly if the woman is related to the adulterer, and a complaint of adultery may be lodged by any person, whether he is or is not in any way connected with her.

There is clause in the Penal Code under which a Magistrate could take cognizance of an act or omission not specified therein, if such act or omission appears to him to be objectionable in the cause of society, and he may sentence the accused to a fine of Rs.25. This gives Tehsildars and Revenue officers ample opportunities of punishing people for disobedience of order, contempt of authority, and other supposed offenses.

A State defaulter is considered a criminal, he is kept in irons in the criminal jail on reduced diet, and is deported to distant and unhealthy stations, if he is unable to bride the officials.

31 Kashmir under the British Administration

January 30, 1890

Legal Document No 30

One of the official arguments in justification of the deposition of the Maharaja of Kashmir is the apparent indifference of the entire body of the Indian Princes in regard to this violent act of the Government. Those who advance such an argument altogether ignore the fact that Indian Princes are perfectly incapable of criticizing the conduct of the Paramount power. It is, however, not a fact that, slaves though they practically are they allowed this act of violence pass by without some sort of protest. Many Indian Princes were so powerfully moved by the incident that they did send secret messages to the Maharaja, deeply sympathizing with his hard lot. They advised him to remain strictly loyal to the British Crown, and at the same time lay his case before Lord Lansdowne, from whom they assured him he would get justice. But the Maharaja has already anticipated his friends, and sent his memorable letter to the Viceroy. Lord Lansdowne will thus see that, by denying justices to His Highness, he has not only bitterly disappointed the Maharaja of Kashmir, but also the Native Princes of India as a body.

That the deposition of the Maharaja caused immense sensation amongst the people of Kashmir and Jammu goes without saying. Indeed, an outbreak was seriously apprehended and the European officials of the State passed their time in great anxiety. General Marquis de Bourbel, the Chief Engineer of the State, who had access to all classes of the people, found their temper so bad, that he thought it prudent to send away his family from Kashmir to Sialkot. There is no doubt that a serious outbreak would have occurred, if the Maharaja and Raja Ram Singh had not supreme control over the army. A hint from them was enough for the Dogras to rise against the new order of things and commit horrible deeds. But both Maharaja Partab Singh and Raja Ram Singh preferred to trust to the sense of justice of the British Government, and they firmly restrained the Dogras from committing any act of violence.

To what a length these Dogras are capable of going may be conceived from an incident, which happened at the end of October last. One of the policies of the present regime is the reduction of the Kashmir army. A regiment of about 1,000 sepoys was thus ordered to be disbanded. But their pay was heavily in arrears, and they refused to obey the order till their salaries were paid in full. The Commander of the regiment had however no money to pay, and he pointed to them the house of the Governor of Kashmir. They besieged the Governor's house and threatened to kill him, and loot the bazaar if he would not pay them. But the treasury was empty, and the Governor was unable to oblige them. So the poor man had to run to the Residency and seek the help of the Resident. Colonel Nisbet however left for Jammu, leaving Captain Ramsay temporarily in charge of the Residency. Captain Ramsay was in a fix. He however advised the Governor to withdraw the order of disbandment at once, and pacify the troops by reinstating them. This was done, and a serious outbreak prevented.

The above incident brings one fact prominently before the public - the utter emptiness of the Kashmir treasury. Indeed, the financial collapse of the State is almost complete. And we shall show by a few facts, how this has been brought about. First of all, highly paid officials have been thrust upon the State. For instance, the three paid Members of the Council are Bhagram, Suraj Kaul, and Sheikh Ghulam Mohi-uddin. The first to get Rs.1,500 per mensem, and the last Rs.800. And yet Bhagram and Suraj Kaul each got only Rs.600 while Extra Assistant Commissioners in British India, and Sheikh Gulam only Rs.300.

But not only do these Members receive high salaries, they have been each given an Assistant or Naib on a pay of Rs. 300 per months All these Assistants are creatures of Colonel Nisbet, whom he has imported from the British territory and through them he manages to keep his control over the Members. One of these Naibs or Assistants is a Gurkha named Thapa. Just fact a Nepalese thrust upon the people of Kashmir, not a word of whose language he can speak or understand. Besides the pay, these Assistants are allowed free quarters. The Governor of Kashmir has also an Assistant or Naib of the above description, one Afzal Khan, who is a well-known creature of Colonel Nisbet.

But if Colonel Nisbet is filling the State with his creatures, so is Raja Amar Singh procuring berths for his own favourtes. The old Vakil got Rs.66 per month. He has been dismissed, and a railway man put in his place on a salary of Rs.500 per mensum: A photographer, who previously taught Raja Amar Singh photography, has been appointed as Superintendent of the printing press on a pay of Rs.500. The old officer of the Toshakhana, who got Rs.200, has been dismissed, and the father of head servant of Amar Singh appointed to the post on a salary of Rs.600. The loaves and fishes of the State are being thus divided mainly to the creatures of Colonel Nisbet and Amar Singh.

Besides many Europeans have been imported into the State on high pay. The Survey Officer, the Chief Engineer, and two or three Assistant Engineers, and the head of the Forest Department are Europeans. The contractors for Jhelum Valley road (the Murree road) and their subordinates are also Europeans. And this road alone devours half a lakh every month, perhaps more. Need anybody now wonder why there is no money in the treasury?

Add to the above the costly hobbies of the Colonel Nisbet. One of these hobbies is the waterwork at Jammu. The treasury was empty, but yet he must prosecute the work and leave a name behind. So he introduced two Engineer friends into the State and asked them to make an estimate of cost and undertake the work. But he was not yet satisfied. He promised them a reward of Rs.10, 000 if they would finish the work in 6 months. The result was that the engineers employed men and purchased materials at exorbitant rates so as to finish the work in time, and get the reward. They finished the work and got the reward, but they have left a veritable white elephant upon the Kashmir State. The mere cost of pumping up the water is Rs.100 per day, or nearly Rs.40, 000 per annum. The water might have been brought down from a higher level, and the cost reduced to almost nil. But the engineers must finish the work in 6 months - the prospect of a reward of Rs.10, 000 was before them. 'o they had no time to search and find out a reservoir on the top of some hill from where the water might come down of its own gravity. And they therefore dug out a well in the bed of the river, and the water has to be raised from there to a height of some 300 feet at the enormous cost stated above.

Nor is this all. Wretched water-piles, with old-fashioned stands, have been introduced. They have been constantly bursting forth, and deluging the streets with water, and waterwork at Jammu has proved altogether a strange phenomenon to the people. And one of the Engineers, who were entrusted with the charge of this water-work, has been appointed for the Kashmir road on Rs.1, 000 per month.

Colonel Nisbet is about to confer the same blessing upon the people of Srinagar at an equally enormous cost. Indeed the water-works there have been already commenced. But there is no immediate necessity for good water at Srinagar. The Jhelum water is quite enough for the purpose. But, we believe, the water-work at Srinagar will also be soon finished by Colonel Nisbet, and the treasury still further exhausted, and the State burdened with another white elephant. If Srinagar wants anything it is the cleaning of its street, and not water.

But while such is the wretched condition of the finance of the Kashmir State, the British Government is going to thrust four British Officers upon the State, with the object of organizing the Kashmir troops. Whether they will be placed under the direction of Raja Ram Singh, who is the Commander in Chief of the Kashmir army, we do not know. But it is not likely that these British officers will ever agree serve to under a Native Commander. We also see that Lieutenant-Colonel Neville Chamberlain has been posted as military to the Council. It is needless to point out that these officers will cost a good deal of money to the State.

Here are a few more items of Expenditure. A new Residency House is about to be built at Jammu at a cost of one lakh. The Resident has already got a house there. But he must have another at the cost of the State. As Jammu and Sialkot have been joined by Railway, there is absolutely no necessity for sucl1 a palace at all at Jammu. And then money is being spent like water upon the Lalmundi palace and Residency houses, in expectation of Lord Lansdowne's visit to Kashmir in March next.

And lastly, the building of the Gilgit Residency which being vigorously pushed on, is a costly affair. Even such things as flag, staffs, furniture, etc. are being sent to Gilgit at the cost of the State. And the following

cutting from an Anglo-Indian paper shows how Captain Durand is making himself merry at the expense of the poor people of Kashmir, and how he has been dealing with the subjects of the Maharaja as if they were British subjects:

"Captain Durand, the British political Agents at Gilgit, is reported to have recently invited the chiefs of Punyal, Hunza and Nagar to come in person or to send suitable representatives to Gilgit to be present at a Darbar. Raja Saddar All Khan of Hunza deputed his half-brother, Mohammad Nasim Khan and the Raja of Nagar his eldest son, Raja Uhzar Khan, while the Punyal Chiefs, who are subjects of the Maharaja of Kashmir, came in person. A Darbar was held by the British Agent, with whom were the Governor of Gilgit and the General Commanding the Kashmir troops. and the establishment of the Gilgit Agency was formally announced. The Chiefs remained in Gilgit as guests for a week, the time being filled up with horse-racing, sports and polo matches in which the people of the country and the Kashmir sepoys freely joined".

32 Resident to Amar Singh

April 27, 1891

Legal Document No 31

I am directed by His excellency the Viceroy and GovernorGeneral in Council to communicate for the information of the Kashmir State Council the following observations regarding the arrangements which the Government of India consider necessary for the exercise of Criminal and Civil jurisdiction within the territories of His Highness the Maharaja of Jammu and Kashmir.

2. The Government of India consider that the Regulations published with the assent of His Highness the late Maharaja in Foreign Department Notification No. 615-P. of the 28th May 1873 are not entirely suited to the present time. Since the publication of those Regulations considerable changes have been effected within His Highness' territories, and year by year the number of persons visiting Kashmir increases and the opening of the Jhelum Valley Road will doubtless attract more and more British capital into the valley of Kashmir. On the other hand the Government of India are glad to notice that there has been considerable improvement of late in the machinery for the administration of justice in Jammu and Kashmir, and that if the late Council continue to devote attention to this important question, it is believed that the Courts of the State will in time command the confidence of the general public.

3. Inasmuch as the Governor-General in Council possesses full personal jurisdiction over subjects of Her Majesty, who may happen to be within the territories of the Maharaja, it would not ordinarily be necessray to peaus before issuing such orders concerning them as might appear from time to time to be necessary. But the exisiting Regulations having been published with the assent of the late Maharaja, and therefore, out of courtesy to His Highness the present Maharaja and the Kashmir State Council, the Government of India have desired me to communicate to the Council their intention of making alterations, suitable to the existing conditions, in the present procedure.

4. The changes that will be made are embodied in the accompanying notification, and may be summarized as follows:

Criminal

(a) Arrangements are made for investing the Resident in Kashmir and his Assistants with the necessary powers for enquiry into or trial of cases against

European British subjects.

Americans

Europeans of any nationality other than British.

Christians of European descents

Native Indian subjects of Her Majesty, such Indian subjects being either merely visiting the territories of His Highness or acting as servants of an European British subject, or

British subjects accused of having committed offenses conjointly with European British subjects.

(b) The trial of Native Indian subjects who ordinarily dwell or carry on business or personally work for gain within the said territories will ordinarily rest with the Courts of the Durbar. At the same time it is to be distinctly understood that any such person convicted by such Courts has the right of making a presentation to the Resident in Kashmir, and that if that officer considers there is ground for interference, his representation on the subject to the Durbar will be attended to.

Civil

(d) Arrangements are made for investing the Resident and his Assistants with powers to dispose of Civil suits in which

Both parties are subjects of Her Majesty.

The defendant is an European British subject.

The defendant is a Native Indian subject of Her Majesty and at the time of the commencement of the suit does not ordinarily dwell or carry on business or personally work for gain within the territories of the Maharaja.

(e) All other suits between subjects of Her Majesty on the one hand and subjects of the Maharaja on the other hand will ordinarily be triable in the Courts of the State.

With regard to clauses (a) and (d) above, I am to request that the Kashmir State Council will favour me with am assurance that they will enforce the attendance of witnesses being subjects of the Maharaja and residing in his territories regarding whom processes have been issued by the Courts thus constituted by the Governor-General in Council.

Again, in regard to clause (e), I am directed to suggest to the State Council that, now that they have secured the services of officials who have had an opportunity of acquiring: a certain amount of judicial and Magesterial experience in British India, it would be wise to issue orders that all cases, Civil and Criminal, in which British subjects are concerned, should be tried before specified Courts in Jammu and Srinagar, respectively and that the officers appointed to such Courts should invariably be chosen from among the best trained officials in the service of the State. By this means it is hoped the Courts of the State will command the confidence of British and Indian traders, and increased capital will be attracted into the country.

33 State Council Supplementary Rules of Business

September 5, 1896

Legal Document No 32

Petitions in respect of Revenue and Judicial cases shall be ordinarily presented to the Court or Officer concerned, under the regulations in force, all miscellaneous petitions presented to His Highness the Maharaja being, however, referred by him to the Member-in-Charge of the Department concerned for disposal or report, if necessary.

His Highness the Maharaja, may send for Proceedings finally disposed of by a Member in Chambers, and if he sees reason for not concurring in the decision or order given, may refer the matter to the Council, this rule shall not, however apply to regular Revenue and Judicial cases, pending or disposed of, for which a special procedure is laid down in the existing rules of business, and State Council Circular No: 47 dated 15th February 1890 under Resolution No: 15 dated 15.2.1890 and under Resolution No: 51 dated 18.1.1900.

Every Member-in-Charge of a Department shall prepare a synopsis of the business conducted by him outside the Council, showing the important matters disposed of by him' the action taken by him on suggestions made or Irshads issued by Highness the Maharaja, and the appointments or transfers made to posts exceeding Rs.50 a month.

The synopsis referred to in Rule 3, shall be laid before the Maharaja for his perusal and signature, and shall than be sent to the Resident along with the Proceedings of the State Council.

No Khillats or rewards to State Officials shall be granted except on the recommendation of the Member-in-Charge of the Department concerned.

Khillats and donations given to persons not being officials of the State by direct Irshad of His Highness the Maharaja shall be limited to a value of not exceeding Rs, 12,000 per annum.

No grants of Nazul Property and alienation of State Property on Nazrana and otherwise shall be made except by a formal Resolution of Council, passed in consultation with the Resident.

It shall be competent to a Member-in Charge of a Department to reserve any question for an expression of the views of the Resident, the Council in all such cases refraining from finally disposing of the case until it is furnished with them.

All dismissals shall be invariably regulated by- the procedure laid down and sanctioned by the State Council under its Rules.

No. expulsion from State territory shall be restored to except after consultation with the Resident.

All important papers, or, if necessary, copies of such' papers relating to references entered in the Agenda, shall be sent to His Highness the Maharaja, a few days or as long as possible before the meeting.

5th September, 1896.

Sd/- (Amar Singh)

34 State Council Supplementary Rules of Business

November 5, 1899

Legal Document No 33

Read Resident in Kashmir's letter No. 6575 dated 29th October, 1899 suggesting the distribution of different departments to be controlled by members of the State Council.

Resolved unanimously that the following distribution of the departments proposed by His Highness Maharaja be sanctioned and that the members concerned be informed accordingly.

Vice - President to Administer:

Foreign Department.

Military Department including stables, Baghikhana, Telegraph and post.

Police.

Dharamarth.

To shakhanas both ginsi and Reserve and museum.

Shikar preserves and game laws.

Mines.

Reception.

Revenue Member to be In Charge Of:

Revenue.

Public Works Department.

Customs.

Education.

Sericulture.

State Property in British India.

Judicial Member to Control:

Judicial.

Jail.

Press.

Medical.

Forests.

Municipalities.

Council Secretariat.

35 Restoration of Powers to Maharaja Pratap Singh

1905

Legal Document No 34

LORD CURZON'S SPEECH

Your Highness, Three times since I came to India as Viceroy have been privileged as representative of the Government to instal an Indian Prince, but have never before enjoyed the pleasure of conferring an enhancement or restitution of powers upon a ruling Chief, and in the annals of the Foreign office we can discover no record of such a ceremony ever having taken place. The present occasion is therefore unique in its character, as well as agreeable in its relation both to the Prince who is the recipient of the compliment and to the people who share in the honour that is being conferred upon their ruler.

This ceremony may be looked upon from a threefold point of view either as typing the policy of the paramount power, or as affecting the fortunes of the Maharaja or the destines of his State.

BRITISH POLICY TOWARDS NATIVE STATES

Let me say a word upon all those aspects of the case. The position which is occupied by the British Crown towards the feudatory princes in India is one of the greatest responsibility that is anywhere enjoyed by a sovereign authority. Some times it may impose upon that authority unwelcome or distasteful obligations. But far more often it is the source of a relationship which is honourable and advantageous to both, and which associates them in the bonds of a political union without any parallel for its intimacy or confidence in the world. As one who has represented the sovereign power for an unusual length of time in India I can speak with some right to be heard when I say that anything that enhance the security or adds to the dignity of the Indian princes is above all things welcome the British Government. Titles and honour and salutes it is in the power of the supreme authority in many countries to bestow, and it is from no vain or childish instinct that the world in all ages has attached value to these emblems or rewards. But surely amongst them the most dignified distinction to offer and the proudest to receive must be the augmentation of governing powers bestowed upon a ruler, to whom they are given not as a matter of course, but because he has been merited them by faithful devotion to the intrest of the people and by loyal attachment to the paramount power. Such an act is even more congenial to the latter if it marks the rescission of an attitude that may have been called for in different circumstances but that might be thought to carry with it the suspicion of distrust.

DISQUIETING RUMOURS

It gives me, therefore the highest pleasure to be here today to confer this particular honour upon one of the foremost of the Indian Princes. But the pleasure is enhanced by the circumstances of the State and of the ruler to whom it is offered I know not why it is, but the State of Kashmir, so fertile in all its resources, has always been more productive of strange rumours than any other native State in India. Thus in Lords Lansdowne's day it was widely circulated that the State was about to be taken over by the Crown. Similarly a few years ago, at the very time when I was first considering with Your Highness the restoration of your powers. it was actually spread abroad that I was discussing with you a territorial exchange by which the Kashmir Valley should pass into the hands of the Government of India and that the British officials were even to come after the manner of the old Moghuls and spend their summer at Srinagar or Gulmarg. Only the other day a fresh crop of silly rumours had to be formally denied, namely that in handing back to you the first place in the government of your State, we had imposed conditions as regards the tenure of property by Europeans in Kashmir for which there was not one word foundation. Your Highness, is not the action which I am taking today the most eloquent commentary upon these absured fictions? Does it not testify in the most emphatic manner to the rectitude and good faith of the British Government?

If excused for a different policy, for a policy of escheat or forefeiture in native States, were required, History will supply cases in which they have sometimes not been lacking. But we have deliberately set ourselves to carry out opposite political theory, namely to retain the native States of India intact, to prolong and fortify their separate existence, and to safeguard the prestige and authority of their rulers. Such has been our Attitude towards Kashmir ever since the end of the first Sikh War when we made over to your grandfather, already the ruler of the State of Jammu, the much more valuable possession of Kashmir. Since that day there has been no departure from this policy, and there has been no more striking evidence of it than the step which I am taking today and which I consider it my good fortune that before I leave India I am in a position to take. It shows conclusively, if any further proof were required that it is our desire to see Kashmir and Jammu a single and compact State in the hands of a ruler qualified to represent its dignity and authority before all India.

PERSONAL FRIENDSHIP

Your Highness, there is a third reason why I have found this act so agreeable, and that is personal to yourself. Since I arrived in India when you were the first ruling chief to greet me upon the steps of Government House at Calcutta we have met on many occasions and have constantly corresponded. You have been my guest at Calcutta, and it is only by a -series of accidents first the flood in 1903, and then the delay in my return from England last year, and finally the circumstances attending my departure in the present autumn-that have prevented me from enjoying the princely hospitality that you have so frequently pressed upon me at Srinagar. However, though these opportunities have been wanting there have not been lacking many others not merely of acquiring your Highness's friendship but of forming a personal regard for yourself and a High opinon of these qualities of head and heart which -will now find an even wider scope for their exercise. I feel that I am the indirect means of honouring a prince who will so conduct himself as to be worthy of honour, and who will never cause my successors to take the step which I have taken.

ADVANTAGES AND IMPROVEMENTS IN KASHMIR

The State of Kashmir is indeed a noble and enviable dominion of which one would wish to be the ruler. Its natural beauties have made it famous alike in history and romance, and they draw to it visitors from the most distant parts. It possesses a laborious population. Its industrial resources are already growing rapidly, and are capable of immense additional expansion. Its accounts have been placed in excellent order; its land settlement has been effected on equitable lines; its revenue are mounting by leaps and bounds; it is about to be connected with India by a railway and will thus lose the landlocked condition which has often been the source of economic suffering, without, I hope, sacrificing the picturesque detachment that renders it attractive to visitors. Your Highness will remember that this railway was my first official suggestion to you at Calcutta in January, 1899, and though nearly seven years have since elapsed I am pleased to think that the alignments and gauge are now fixed.

Finally, your State possesses a mountain frontier uneqalled in diversity of race and character, of natural beauty and political interest, and towards its protection you make the largest contribution of any State in India to imperial defence. I allude to the Kashmir Imperial Service Troops of which your Highness is so justly proud, and whose service to the Empire has already won for your Highness the exalted rank of a British General. Such are the features and the Prospects of the State of which your Highness is the ruler, and of which you are now given the supreme and responsible charge.

NATURE OF THE NEW POWER

Henceforward the State Council which for the last sixteen years has administered the affairs of the State will cease to exist, and its power will be transferred under proper guarantees to your self. You will be assisted in the discharge of these duties by your brother Raja Sir Amar Singh, who has already occupied so prominent a position in the administration and

who will be your chief minister and right-hand man. I am convinced that he will devote his great natural abilities to your faithful service, and it will be your inclination as well as your duty to repose in him a full measure of your trust.

In all important matters you will be able to rely upon the counsel and support of the British Resident, who, owing to the peculiar conditions of Kashmir, has played so important a part in the recent development of the country and whose experience and authority will always be at your command and will assist to maintain the credit of the State.

COUNCIL AND EXHORTATION

I feel convinced that your Highness will exercise your powers in a manner that will justify the Government of India for their confidence and that will be gratifying to your people and creditable to yourself. You rule a State in which the majority of your subjects are of different religion from the ruling caste, and in which they are deserving of just and liberal consideration. You rule a State which is much before the eyes of the world and is bound to maintain the highest standard of efficiency and self respect. Finally, you rule a State which has a great and splended future before it, and which should inspire you with no higher or no lower aim than to be worthy of the position of its ruler, and thus to add fresh lustre to the proud title of Maharaja of Jammu and Kashmir.

36 New Arrangements for the Administration of Kashmir by Resident in Kashmir

May 1906

Legal Document No 35

(Extract)

Note on the new arrangements for the administration of the Jammu and Kashmir State.

The State Council is abolished.

The powers of the State Council will be assumed by His Highness the Maharaja on the following conditions

That His Highness will exercise his powers under the advice of the Resident; that he will take no step of importance, without consulting him; and that he will follow his advice whenever it may be offered;

That the annual budget will be prepared and passed in consultation with the Resident, and that expenditure not provided for therein shall only be incurred after his previous approval. The previous sanction of the Resident shall also be 'necessary to any reappropriation when the sum to be reappropriated from or to any single head of expenditure amounts to or exceeds Rs.10,000 either by itself, or when added to previous reappropriations made during the same year to or from the same head:

Chief Revenue Officer.

Chief Judicial Officer.

Chief Engineer, Public Works Department.

Engineer-in-Chief. Railway Department.

Engineer-in-Chief, Electric Engineering Department.

Settlement Commissioner.

Accountant General.

Superintendent of Customs and Excise.

Director of Sericulture.

that the officials of the Kashmir administration holding the appointments named above shall only be appointed or removed with the concurrence of the Government of India;

that the Maharaja shall appoint a Minister with the previous approval of the Government of India, by whom the business of all departments shall be laid before him;

that each departmental budget estimate shall be submitted to the Maharaja who, after consolation with the Maharaja and the Resident as in (ii) above, shall submit it for the final sanction and approval of His Highness;

that subject to the proceeding rules, His Highness the Maharaja shall have power to veto or alter any orders passed by the head of a department, and may through the Minister call for an revise any proceedings in any department of the administration;

that all appointments and removals of gazetted officers shall be made by order of His Highness the Maharaja on due cause shown;

that an English translation of the proceedings and orders of the Maharaja or the Minister in the following classes of cases shall be forwarded fortnightly for the Resident's information:

orders modifying the annual budget for the year as finally passed by the Maharaja;

orders involving alienation of the revenue or remission of taxation;

orders involving the appointment or removal of gazetted officers;

orders effecting the new Railway or Electrical Engineering Department;

orders passed on the assessment reports of the Settlement Department, or on their reports on Rev rue-free Holdings, Jagirs, Muafis, Inams, & c;

orders passed on the proposals made by the Sericulture Committee or the head of the Sericulture Department;

orders passed in regard to annual or periodical contracts given by the State;

orders appertaining to the administration of the frontier.

That the existing arrangements in Regard to the allowances enjoyed from the State revenue by the Maharaja shall continue unchanged;

The Minister shall have general control of all Departments, and be the channel of communication for them between the Residency and His Highness the Maharaja;

The appointment of Minister in charge of the Foreign Department will be created with the proviso that the officer selected for the post shall be acceptable to both His Highness the Maharaja and his Prime Minister;

The rules of business already in force end '-standing orders" for the Army shall be adhered to until any necessity for their modification is shown, with the exception that all matters hitherto referred to the Council shall in future be refer- Or red to the Durbar through the Prone Minister;

No existing Resolution of the State Council shall be cancelled or modified until final orders to that effect have been passed by the Durbar in consultation with the Resident; and

The powers of Members in charge of, and Head of Departments and the regulation of work between the various Departments have already been clearly defined in State Resolutions, and no change shall be made until the necessity for such change has been established.

37 Transactions of Business of the Council Memorandum Maharaja Pratap Singh

1906

Legal Document No 36

(Extract)

Consequent on the abolition of Council the following arrangements as to the conduct of work by the Ministers and the Chief Ministers are hereby laid down:

The Ministers

The Ministers shall for the present continue to exercise the same delegated authority in respect of the various departments under their control, which they used to exercise as Members of Council during the existence of the State Council, and shall submit such matters for the orders of His Highness the Maharaja as were submitted to that administrative body for dicision Such matters shall be submitted through the Chief Minister accompanied by a clear memorandum on the case and the connected files. His Highness may, if he considers necessary make verbal enquiries from the Minister about a matter thus submitted to him, by calling upon the Minister concerned to to attend at a special time.

Chief Minister

The Chief Minister shall be the channel of communication between the Ministers and His Highness the Maharaja. All references received by the Chief Minister from the different Ministers shall be forwarded by him to His Highness the Maharaja for orders, together with his own opinion on the proposals as made by the different Ministers. When submitting the files to His Highness the Maharaja, the Chief Minister will forward with them an abstract of the case which shall be prepared in the office of the Chief Minister in form appended hereto. A chalan giving the details of the cases thus sent up should also be forwarded. This chalan shall be signed by the Private Secretary to His Highness and returned to the Chief Minister's Office. On the day following the one on which the papers are thus received, they will be produced before His Highness and the Chief Minister by the Private Secretary at the time fixed for the transaction of such business. The items of business in which His Highness has only to express an agreement with the Chief Minister's views shall have a note made to the effect in that statement, while the references in which His Highness entertains a different opinion shall be discussed -with the Chief Minister, and their final opinion arrived at shall form the basis of His Highness's order which shall on its being passed be recorded and note thereof duly entered in the appropriate column in the said statement. Such cases when -finally disposed of by His Highness shall also be returned to the Chief Minister, together with the statement above referred to, setting forth the orders of His Highness on the references submitted to him. The Chief Minister shall then retain in his office the abstract of each case sent up by him, his own note of opinion, and the original order of His Highness, and shall communicate the orders passed on the references by His Highness to the Ministers concerned, returning to them at the same time the original files.

His Highness reserves to himself the function of seeking the advice of the Resident in Kashmir in matters of importance, particularly where difference of opinion is involved, in such manner as he may consider desirable.

The fortnightly abstract of proceedings to be sent up to the Resident shall be prepared in the Chief Minister's Office and forwarded to the Residency by the Chief Minister.

38 Letter from Chief Minister Jammu and Kashmir State to Maharaja Pratap Singh

July 2, 1919

Legal Document No 37

In accordance with the direction contained in Your Highness's letter dated the 28th January 1919, I communicated officially to the Resident in Kashmir Your Highness's request for the grant of full and unrestricted powers in the control of the administration of the State and asked him kindly to move His Excellency the Viceroy to accord his sympathetic and favourable consideration to it.

The Resident laid Your Highness's request before His Excellency the Viceroy and has communicated His Excellency's decision thereon in his letter No. 180-C dated the 28th May, 1919.

I laid this letter before Your Highness and explained its contents. In accordance with Your Highness's verbal orders the changes sanctioned by His Excellency are explained below:

(a) Method followed in respect of the tendering of advice by the Resident in matters of importance.

The procedure in vogue is that a proposal is first submitted to Your Highness for sanction. If it is sanctioned by Your Highness, it is referred to the Resident for approval. In future the procedure will be that it will first be laid before Your Highness. If it is approved or sanctioned by Your Highness, it will be referred to the Resident by the Chief Minister demi-officially for advice. The case will be again laid before His in Highness for final orders after the Resident's advice has been obtained. The present method will thus be altered so as to ensure that the Resident's advice will in all cases be obtained before and not after a proposal is submitted to Your Highness for sanction.

(b) Submission of fortnightly synopsis of proceedings and orders passed by Your Highness.

In accordance with the condition (viii) of Lord Curzon's Kharita dated the 30th August 1905, a synopsis of orders passed by Your Highness in certain cases is to be forwarded to the Resident fortnightly. The Government of India have agreed that orders passed under headings (a), (c), (d), (e), (f) and (g) need no longer be reported, provided that any orders passed in these classes of cases, which are contrary to or involve any important established principle, are, communicated by the Chief Minister to the Resident, but orders passed under (b) and (h), viz., (1) orders appertaining to the frontier, should continue to be reported.

(c) Preparation of Budget

The holding of the annual Budget meetings will be discontinued. The Budget estimates will in future be submitted to the Chief Minister who, after consulting Your Highness, will take the advice of the Resident with regard to individual items included in the Budget will not be required if the expenditure is devoted to the purpose for which the allotments are made. Your Highness will also be able to sanction expenditure up to a limit of Rs. 20,000!- on the entertainment of Ruling Chiefs and other distinguished guests visiting Kashmir which cannot at present be incurred without Resident's approval.

It may be added that subject to the limitations imposed by the first five conditions laid down in Lord Curzon's Kharita dated the 20th August 1905 as subsequently modified; Your Highness possesses and can exercise powers of veto, revision and review in all cases.

It may also be stated that the Government have sanctioned an increase in Your Highness Privy Purse allowance from 101akhs per annum with effect from the Baisakh, the commencement of the current financial year.

If Your Highness approves, the revised procedure will be introduced forthwith.

Approved. The action may please be taken accordingly

Sd/

Pratap Singh, Maharaja

Lieutenant General, G.C.S. I.,
G.C.I.E., G.B.E., L.L.D., 23-7-1919.

39 Regulation No. XLVI Jammu and Kashmir State Civil Courts Regulation

1921

Legal Document No 38

(Extract)

There shall continue to be a High Court for the Jammu and Kashmir State.

The High Court shall be deemed for the purpose of all enactments for the time being in force to be the highest Civil Court of appeal or revision, subject to the control of, and the judicial powers exercised by, His Highness the Maharaja Sahib Bahadur.

The High Court shall make rules for the transaction of the work of the High Court.

(a) The High Court shall have a Registrar and shall have the power to appoint such Ministerial Officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Regulation. (b) The Registrar and the Ministerial Officers appointed under this section shall exercise such powers and discharge such duties of non-judicial or quasi-judicial nature as the High Court may direct. (c) Any Ministerial Officer may be suspended or dismissed from his office by order of the High Court.

(a) The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to the High Court. (b) The High Court shall from time to, time visit and inspect the proceedings of the Courts subordinate to the High Court and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of justice.

(A) The High Court may make rules consistent with this Regulation and any other enactments for the time being in force:

providing for the translation of any papers filed in the High Court and copying and printing any such papers or translations. and requiring from the persons at whose Instance or on whose behalf they are filed payment of the expenses thereby incurred;

declaring what persons shall be permitted to practice as petition-writers in the Courts of the State, regulating the conduct of business by persons so practicing, and determining the authority by which broachers of rules under this clause shall be tried;

determining in whet eases legal practitioners shall be permitted to address the Court in English;

prescribing forms for seals to be used by those Courts;

regulating the procedure in cases where any person is entitled to inspect a record of any such Court or obtain a copy of the same, and prescribing the fees payable by such persons, for searches, inspections and copies;

conferring and imposing on the Ministerial Officers of the subordinate Courts such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

prescribing forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;

providing for the inspection of those Courts and the supervision of the working thereof;

regulating the exercise of the control vested in the High Court by section 35 (4) of this Regulation; and

regulating all such matters as it may think fit, with a view to promoting the efficiency of the judicial and Ministerial Officers of those Courts, and maintaining proper discipline among those officers.

(B) Whoever breaks any rule made under clause (b) shall be punished with a fine which may extend to fifty rupees.

(1) The High Court shall comply with such requisitions as may be made by His Highness for certified copies, or, extracts from records of the Court and the Courts subordinate thereto.

(1) The High Court, wren sitting as a Court of Civil judicature, shall take evidence and record judgments and orders in such manner as it, by rule, directs, and may frame forms for any proceeding in the Court in the exercise of its civil jurisdiction. (2) The following provisions of Code of Civil Procedure shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, rule 3 of Order X, rule 5 to 9 (both inclusive). rule 11, rule 13 to 15 (both inclusive) and rule 16 of Order XVIII (so far as it relates to the manner of taking evidence), rules 1, 3, 4 and 5 of Order XX and so much of rule 7 of Order XXXIII as relates to the making of a memorandum.

The High Court has and shall have power to remove and to try and determine as a Court of extraordinary original jurisdiction any suit being of falling within the jurisdiction of any Court subject to its superintendence when High Court shall thinly proper to do so, either on the agreement of the parties to that effect or for purpose of justice.

The High Court shall have such power and authority in relation to the granting of probates of last wills and testaments and letters of administration of the goods, chattles, credits and all other effects whatsoever of persons dying intestate whether within or without the State as are or may be conferred on it by any law for the time being in force.

Besides the High Court, the Courts of Small Causes established under the small Cause Courts Regulation, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:

The Court of the District Judge, also called the District Court;

(2) The Court of the Additional Judge;

(3) The Court of Subordinate Judge; and

(4) The Court of the Munsiff.

(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction, shall lie to the High Court. (2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which the decree or order had been made by the District Judge, an appeal would not lie to that Court.

Save as aforesaid an appeal from a decree or order of a Subordinate Judge shall lie: (a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed two thousand and five hundred rupees; and (b) to the High Court in any other case.

Save as aforesaid, an appeal from a decree or order of a Munsiff shall lie to the District Judge.

Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

An appeal from the order of District Judge on the appeal from the order of the Munsiff under section 25 shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

The High Court may, with the previous sanction of His Highness, and by notification in the State Gazette, direct that appeals lying to the District Court under sub-section (2) from all or any of the decrees or orders passed in an original suit by any Munsiff shall be preferred to such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.

40 Sri Pratap Reforms Regulation Reserved Subjects

1922

Legal Document No 39

In exercise of the powers under Section 6 of the Sri Pratap Reforms Regulation 1918, l hereby direct that Military matters "shall be laid before me by the Commander-in-Chief and the following matters with the opinion of the Member-in-Charge of -the department concerned for my final disposal; all others being laid before me in Council:

Matters bearing upon the relations between His Highness the Maharaja and the British Government and Feudatory Chiefs within the State.

Matters relating to prerogatives, rights, powers, duties or privileges of His Highness the Maharaja or his successors .

Matters relating to the management and control of the household of His Highness the Maharaja or his successors.

Matters relating to the rights, privileges, easements, assignments and gifts and allowances of the Ruling family of the J&K State.

Matters regulated by treaties or formal agreements now in force or which may hereafter be entered into by His Highness the Maharaja with the British Government and Feudatory Chiefs of the J&K State.

41 Sri Pratap Reforms Regulation No. IV of 1922

Legal Document No 40

I accord sanction to Sri Pratap Reforms Regulation, first part, as a tentative measure for one year. It will come into force from the date the first Council meeting of the Executive "Council sits. This order should be published in the State Gazette.

Whereas, in view of the stage of evolution which the Administration of the J&K State has reached, it is expedient to amend its constitution so as to increase the efficiency of the Administration and to afford the means for the association therewith of subjects of the State, it is hereby enacted as follows:

(l) This Regulation may be called the Sri Pratap Reforms. Regulation, 1 9l 8.

(2) It shall come into force on and from the date to be fixed in this behalf by His Highness the Maharaja of Jammu and Kashmir.

CONSTITUTION OF THE J & K STATE COUNCIL

From the date of commencement of this Regulation or from such other date thereafter, as may be specified by His Highness the Maharaja, and Executive Council, hereinafter called "The Jammu and Kashmir State Council" shall be establistsd in the State.

(l) The Jammu and Kashmir State Council shall consist the following Members: Commander-in-Chief and Senior Members, Foreign Member, Revenue Member, Law Member, Home Member. Member for commerce and Industry. (2) Raja Sir Harisingh, the Commander-in-Chief, shall have precedence over the other Members of the Council, the Foreign Member shall stand next, and the other Members according to seniority.

His Highness the Maharaja shall be the president of the Jammu and Kashmir State Council.

The J&K State Council shall also have a Secretary and such establishment as may be deemed necessary.

All matters which, under the existing constitution, require orders of His Highness the Maharaja and cannot other-wise be dealt with by any Member or any other authority under powers delegated to him by virtue of any law, rule, regulation or practice sanctioned by His Highness, shall . in future be submitted to His Highness in the J&K State Council, with the exception of the subjects reserved specially for final disposal by His Highness.

42 High Court Code of Civil Procedure

Legal Document No 41

(Extract)

100. (1) **Save** where otherwise expressly provided in the body of this Code or by any other law for the time being in force, as appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:

The Decision being contrary to law or to some usage having the force of law;

The decision having failed to determine some material issue of law or usage having the force of law;

A substantial error or defect in the procedure provided by this Code of by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merit; and

The decision having varied cancelled or reversed the decision of the Court of first instance, where the subject matter of the suit exceeds two hundred rupees in value.

(2) An appeal may lie under this section from an appellate decree passed exparte.

No second appeal shall lie except on the grounds mentioned in section 100.

No second appeal shall lie in any suit of the nature cognizable by Courts of small Causes, when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.

43 Constitution of Jammu and Kashmir State Council

1924

Legal Document No 42

1. **The** Council shall consist of the following Members:

Commander-in-Chief and senior and foreign Member.

Revenue Member.

Home and Law Member.

Public Works Member.

Finance and Police Member.

6. Member for Commerce and Industries.

2. The Council shall have a Secretary and necessary establishment.

Except as provided for in Article 5 below, the Senior Member, the member next in order of the seniority present at the meeting shall preside.

A quorum of the Council shall consist of four Members.

With the exception of the subjects enumerated below which are reserved for the Commands *of* His Highness all matters shall be dealt with by the Council and the proceedings of the Council shall be submitted to His Highness by the Council Secretary for sanction, no resolution being brought -into force until the sanction of His Highness has been obtained. If His Highness disagrees with any resolution he will inform the senior Member of the time and place at which the Council should attend and discuss the case in question in the presence of His Highness. If after discussion His Highness still disagrees, he will there upon exercise in Council his prerogatives of veto And decision in the case shall be as commanded by His Highness.

In the Reserved subjects enumerated below, the following procedure shall be adopted:

Military matters shall be submitted to His Highness for his commands by the Commander-in-Chief

Cases connected with other Reserved subjects shall be submitted to His Highness for his commands by the Member concerned through the senior Member.

Appeals which lie to His Highness under section 34, 35, 36 of the High Court Regulation and cases for confirmation of sentences under section 38 of the said regulation, shall be referred to the Law Members for opinion, who shall after hearing the parties, submit the cases through the senior Member for the orders of His Highness.

Nothing herein contained shell, in any way derogatefrom the powers of His Highness to refer any matters enumerated in the list of Reserved subjects to Council whenever he may consider it expedient to do so.

RESERVED SUBJECTS

Military.

Political matters affecting the peace and Good Government of the State.

Treaties and agreements now in force or which mayhereafter be entered into by His Highness with the British Government or his Feudatorychiefs.

The relation between His Highness and the British Government or his Fendatory Chiefs.

Prerogatives and powers of His Highness, and the rights, privileges, gifts and allowances of the ruling family,its relations and connections.

Titles, Salutes, Ceremonials, Tours and Special occasions.

Frontier affairs.

Residency and Residency Correspondance.

Khillats, Tambols, Vartans and Grants at His Highness disposal.

Reception and Entertainment of Guests, Allocation of Huts, Rest-Houses and Guest-Houses.

Toshakhanas.

Rakhs and Game Preservation.

State Representatives.

Baggikhana, Malmaveshi, Stables, Boats and Cars.

Jagirs and Muafis.

Devasthans and Dharmarth Trust Fund.

Appeals which lie to His Highness under Section 34, 35, 36 of the High Court Regulation, of Sambat 1978 and cases submitted to His Highness for confirmation of sentences under section 38 of the said Regulation.

Tasdiq-i-Wasiqajat.

Police special Reports as Accidents, Riots, Arrival and suspicious movements or actions of Visitors.

Note: Petitions submitted to His Highness direct shall be referred through the Senior Member to the Memberin-Charge of the Department concerned for disposal or report as the case may require.

DISTRIBUTION OF PORTFOLIOS

1. Commander-in-Chief and Senior and Foreign Member.

Commander-in-Chief-Military.

Senior Member

General Supervision.

Political matters affecting the peace and good Government of the State.

Receipt and despatch of all correspondence between His Highness and all officials.

General Administration Report.

(c) Foreign Member.

Treaties and agreements now in force or which may hereafter be entered into by His Highness with the British Government or his feudatory chief.

The relation between His Highness and the British Government or His feudatory chiefs.

Prerogatives and powers of His Highness and the rights, privileges, gifts and allowances of the Ruling Family; its relations and connections.

Titles, Salutes, Ceremonials, Tours and Special Occasions.

Frontier affairs.

Residency and Residency correspondence.

Khillats, Tambols, Vartans and Grants at His Highness.

Reception Department, Entertainment of Guests, Allocation of Huts, Rest Houses and Guest Houses.

Toshakhanas.

Rakhsand Game Preservation.

State Representatives.

Baggikhana, Malmaveshi, Stables, Boats and Motor cars.

(d) Revenue Member.

Land Revenue.

Jagirs and Muafis.

Revenue Settlement.

Co-operative credit Societies.

Agriculture.

Horticulture.

Civil veterinary.

Devasthans and Dharmarth Trust Fund.

Red Cross.

State property in British India.

(e) Home and Law Member.

(a) Home

Education.Medical and Jails.

Municipalities.

Research and Libraries.

Archeology and Museums.

Manageries.

Meteorological Department.

(b) Law

Judicial department and Legislation.

Appeals which lie to His Htghness under Section 34, 35 and 36 of the High Court Regulation of Sambat 1.978, and cases submitted to His Highness for confirmation of sentences under Section 38 of the said Regulation.

Tasdiq-i-Wasiqajat.

(f) Public Works Member.

Irrigation.

Roads and Buildings.

Electrical Department.

Mechanical Department.

Telegraph Department.

Telephone Department.

(g) Finance and Police Member.

Finance.

Treasuries.

Accounts.

Audit.

Stamps.

Kashmir valley food control.

Police.

Police Special Reports, such as Accident, Riots, Arrival and Suspicious movements or actions of visitors.

(h) Member for Commerce and Industries.

Forests.

Sericulture and Silk Weaving.

Mulberry culture.

Mining.

Commerce and Industries.

Excise.

Customs.

Stationery.

Industrial Education.

Printing Press.

POWERS OF THE COUNCIL

1. Subject to the sanction of His Highness, the Council shall be the final authority in all matters which cannot be dealt with finally by any member or any other officer, by virtue of powers delegated to him under any law, rule, regulation? order, resolution or practice sanctioned before the constitution of the Council, or sanctioned in future by the Council with the exception of cases relating to the subjects reserved for the commands of His Highness under the title or Reserved Subjects.

2. The Council shall, amongst other things, be empowered:

to see that the Annual Budget is framed and submitted to Council six weeks before the commencement of the next Financial year;

to pass the Annual Budget;

to sanction the reappropriation of any expenditure from one Head to another of the General Budgets over and above the powers delegated to Members;

to sanction all extra grants not provided for in the Budget;

to sanction all appointments and removals of Gazetted Officers;

to sanction leave to officers, over and above the powers delegated to Members;

to hold or cause to be held departmental enquiries. into the conduct of any officer and to call for records from any office through the Member-in-Charge and to pass such order as may be considered necessary;

to sanction pensions or allowances to Gazetted officers, over and above the powers delegated to Members, also special pensions and compassionateor other allowances for life or for lesser periods to employees of the State, their heirs or representatives;

to pass progress and other Reports submitted by Members.

to sanction acquisition of land under the Land Acquisition Act, over and above the powers delegated to the Revenue Member and to grant land under the State Waste Land Rules or under the House-building Rules;

to settle boundary disputes and questions relating to the Settlement Department, over and above the power delegated to the Member concerned;

to decide Appeals against orders passed by Member of Council in cases which are not specifically included in the Reserved Subjects;

to sanction suspensions or remissions of Revenue over and above the power delegated to the Member concerned;

to issue instructions for the more efficient organisation and dispatch of business in the various departments of the State and to make rules to regulate the Proceedings of any department;

to settle all matters pertaining to more than one department;

to revise any order passed by the Member-in-Charge of a department;

to call for and modify any proceedings in any department of the Administration and to stay the execution of any order pending the final decision of Council;

to sanction scheme of general reform, no such scheme being introduced without the previous sanction of Council.

RULES FOR CONDUCT OF BUSINESS IN THE COUNCIL

The Rules for the conduct of business in the Council shall be as follows:

Every case to be submitted to Council shall be sent to the Council Secretary by the Member concerned. She Member concerned shall see that a complete precis of the case is drawn up. and that his own opinion and opinions of the Head of the Department or Heads of the Departments subordinate to him and affected by the question at issue are duly recorded.

In every case in which financial issues are involved, the opinion of the Finance Member shall be obtained by the Member concerned and submitted with the case to Council.

When it is proposed to sanction, amend or repeal any regulation, rule, Law, order or notification the opinion of the Law Member shall be obtained by the Member concerned and submitted with the case to the Council.

In every case which directly affects more than one Member of Council, the Member submitting the case shall see that the opinion of the other Member or Members directly concerned and the opinion of the Heads of Departments affected are duly obtained and recorded before the case is referred to Council.

The Council Secretary shall prepare, in the order of the receipt, a list of all cases received from Members in the prescribed and complete form, he shall then draw up with approval of the Senior Member the Agenda for the Council Meeting; as a general rule, no case shall be entered in the Agenda unless it has been received at least four clear days before the next meeting is due to take place.

When the Agenda has been drawn up, copies shall be forwarded to every Member at least 48 hours before the time fixed for the Meeting of Council except in emergent cases.

Except, as provided for in Rule 19, the Council shall assemble at such time and place so appointed for the meeting.

The Council shall, as far as may be practicable meet on two consecutive days in every fortnight, but any matter of special urgency requiring immediate disposal may be dealt with at an extraordinary meeting which may be called at any time by the Senior Member.

Four Members shall constitute a quorum.

If a Member is unable to attend any meeting, he shall notify the fact to the Secretary.

Except as provided for in Rule 19, the Senior Member shall preside at meetings of the Council.

The Presiding Member shall, be responsible for the proper working of the Council and for compliance with, these rules and with any other rule or orders which may be passed by the Council from time to time.

The business of the Council shall be transacted in English.

At meetings of Council the cases shall be dealt within the order in which they are entered in the agenda unless the Presiding Member otherwise directs.

If any Member desires postponement of the consideration of any case, it shall be postponed, unless the Presiding Member, for reasons to be recorded, rules otherwise. All cases so postponed shall be taken up at a subsequent meeting of Council.

Any cases not disposed of at a meeting of Council shall be taken up at the next meeting if practicable.

Should the Council decide to refer any question to a Select Committee, the Chairman and the other member of the Committee shall be appointed by the Council. The Council may authorize any such Committee to record evidence or to summon representatives of any class or community.

In all cases discussed in Council, if there be no difference of opinion, the decision of the Council shall be recorded in the form of a Resolution. If opinion be divided, the question shall be put to vote and the opinion of the majority shall be recorded in the form of a Resolution, the presiding Member being entitled

to casting vote in the event of the votes being equally divided, but in all cases where the decision is not unanimous, the opinion of every Member shall be separately recorded.

The proceedings of each Council meeting shall be subs misted by the Councial Secretary to His Highness for his sanction and no Resolution shall and come to force until and unless it has been sanctioned by His Highness. Should His Highness disapprove of any Council Resolution, he will inform the Senior Member to that effect and the Members of Council shall attend at such time and place as His Highness may appoint for discussion, in his presence, of the subject involved. His Highness will preside and after the Members have been given the opportunity of explaining their views, His Highness shall there upon decide and announce his decision in Council as to whether the Resolution shall be confirmed or vetoed.

All orders of the Council shall be issued in the name of His Highness in Council and shall be signed by the Secretary.

The Proceedings of Council shall be reduced to writing and recorded by the Secretary in a Minute Book, which shall be signed by the Presiding Member. In the absence of the Senior Member, the duties assigned to him under these rules shall be discharged by the Member next to him in order of Seniority, who may be present on the occasion.

DUTIES OF THE SECRETARY OF THE COUNCIL

to receive all papers submitted to Council;

to prepare and circulate the Agenda of Business with the approval of the senior Member and to give due notice of meetings to members;

to return cases to Members which have not been submitted in a complete form as laid down in Rules 1 to 4;

to record the proceedings of Council;

to obtain His Highness sanction to the Resolutions of Council; to issue the Members concerned the Resolutions of Council without loss of time;

to furnish each Member with a copy of the printed proceedings;

to comply with requisitions made by the Members of Council;

to see that reports called for by the Council are promptly sent for, from the Department concerned.

to supervise the working of the office and be responsible for the custody and maintenance of records;

the Secretary, subject to appeal to Council shall have complete control over his once establishment including the Superintendent, in the matters of appointment, suspension, leave Punishment and promotion;

he shall be responsible for the custody of the Seal of the Council and for the maintenance of the usual office registers, a list of pending references and the Minute Book of the Proceedings of the Council;

In all cases in which the Secretary sees no objection, copies of Resolution of the present and the late State Council and His Highness orders if applied for, may be given by him to applicants with reference to Council;

The Council Secretary shall be empowered to authorize fluctuating expenditure and to pass travelling allowance bills of his subordinate establishment within the allotments provided.

44 Constitution of Jammu and Kashmir State Council

1925

Legal Document No 43

His Highness the Maharaja Bahadur shall preside over the meetings of the Council.

The council shall consist of the following Members:

Revenue Member and Army Minister.

Finance and Police Member.

Member for Commerce and Industries.

Home and Law Member.

The Council shall have a Secretary and the necessary establishment.

The quorum of the Council shall consists of three Members.

In the absence of His Highness the Maharaja Bahadur, the Member senior amongst the Members present at the meeting shallpreside and the proceedings of such meetings shall be submitted by the Council Secretary to His Highness for his sanction, and no resolution shall come into force until it is sanctioned by His Highness.

Should His Highness disapprove of any Council Resolution arrived at in his absence he will command the Council Secretary to direct the Members of Council to attend at such time and place as His Highness may appoint for discussion in his presence of the subject involved. His Highness will preside and after the members have been given the opportunity of explaining their views, His Highness will decide and announce his decision in Council as to whether the Resolution shall be confirmed or vetoed.

At any meeting of the Jammu and Kashmir State Council at which His Highness the Maharaja Bahadur is present, if their is a difference of opinion on any question, His Highness may, if he does not agree with the opinion of the majority, exercise his right of veto in the Council. In such a case the determination of the question shall follow the commands of His Highness.

With the exception of the subjects enumerated below, which are reserved for the direct commands of His Highness, all matters shall be dealt with by His Highness i n Council and the proceedings of the Council shall be submitted to His Highness and to the Members by the Council Secretary for signatures, no Resolution being brought into force until the proceedings have been duly signed and sanctioned.

In the Reserved Subjects enumerated below the follow-ing procedure shall be adopted:

Military matters shall be submitted to His Highness for His Commands by the Colonel-on-the staff.

Subjects dealt with by the Foreign Department shall be submitted to His Highness for His commands by the foreign Secretary.

Cases connected with Reserved Subjects other than those mentioned in No. 25 shall be submitted to His Highness for His commands by the Member concerned through the State Secretary.

Civil and criminal appeal and applications and cases for confirmation of sentences of death or imprisonment for life shall be submitted by the Law Member after hearing the parties with his opinion through the State Secretary for the commands of His Highness.

Nothing here in contained shall, in any way, derogate from the power of His Highness to refer any matter enumerated in the list of Reserved Subjects to Council whenever he may consider it expedient to do so.

RESERVED SUBJECTS

Military.

Political matters affecting the peace and good Government of the State.

Treaties and agreements now in force or which may here-after be entered into by His Highness with the British Government of his Feudatory Chiefs.

The relations between His Highness and the British Governments of his Feudatory Chiefs.

Prerogatives and powers of His Highness, and the rights, priveleges, gifts and allowances of the Ruling Family, its relations and connections.

Titles, Salutes, Ceremonials, Tours and Special occasions.

Frontier Affairs.

Residency and Residency Correspondence.

Khillats, Tambols, Vartans and Grants at His Highness disposal.

Toshakhanas.

Rakhs and Game Preservation.

State Representatives.

Baggikhana, Malmaveshi, Stables, Boats and Cars.

Jagirs and Muafis.

Devasthans and Dharmarth Trust Fund.

Note: - Petitions submitted direct to His Highness shall be referred by the State Secretary to the Member-inCharge of the Department concerned for disposal or report as the case may require.

POWERS OF THE COUNCIL

Subject to the sanction of His Highness, the Council shall be the final authority in all matters which cannot be dealt with finally by any Member or any other officer, by virtue of powers delegated to him under any laws rule, regulation, order, resolution or practice sanctioned before the constitution of the Council, or by the Council or sanctioned in future by the Council with the exception of cases relating to the subjects reserved for the commands of His Highness under the title of Reserved Subjects.

The Council shall, amongst other things, be empowered:

to see that the Annual Budget is framed and submitted to Council six weeks before commencement of the next Financial Year;

to pass the Annual Budget;

to sanction the reappropriation of any expenditure from one Head to another of the General Budget, over and above the powers delegated to Members;

to sanction all extra-grants not provided for in the Budget;

to sanction leave to officers, over and above the powers delegated to Members;

to pass progress and other Reports submitted by members;

to settle boundary disputes and questions relating to the Settlement Department, over and above the power delegated to-the Member concerned;

to sanction suspensions of remissions of Revenue over and above the power delegated to Member concerned;

to issue instructions for the more efficient organisation and despatch of business in the various departments of the State and to make rules to regulate the proceedings of any department;

to settle all matters pertaining to more than one department;

to revise any order passed by the Member-in-Charge of a department;

to call for and modify any proceedings in any department of the Administration and to stay the execution of any order pending the final decision of Council; and

to sanction scheme of general reform, no such scheme being introduced without the previous sanction of Council.

As regards Revenue Appeals, applications for Review or Revision, the opinion of the Law Member shall, where he agrees with Revenue Member, be treated as the decision of the State Council, and the Secretary State Council shall inform the Revenue Member accordingly, to enable him to take action accordingly. In cases in which the Law Member differs from the Revenue Member, the papers shall be submitted to the Council by the Secretary of Council with a detailed note for orders.

Note: - Reserved subjects shall be excluded from the operation of clauses C to H both inclusive above.

DISTRIBUTION OF PORTFOLIOS

The following matters shall be under the direct control of His Highness the Maharaja Bahadur:

Military.

Foreign.

General Supervision.

Political Matters affecting the peace and good Government of the State.

REVENUE MEMBER

Land Revenue.

Jagirs and Muafis.

Revenue Settlement.

Civil Veterinary Department.

Devasthans and Dharmarth Trust Fund.

Road cess, Patwar Fund and Chowkidars funds.

State property in British India.

HOME AND LAW MEMBER

(a) Home Member.

Education.

Medical and Jails.

Municipalities.

Research and Libraries.

Archeology and Museums.

Manageries,

Meterological Department.

Telegraph Department.

Telephone Department.

(b) Law Member:

Judicial Department and Legislation.

Civil and criminal appeal and applications and cases for confirmation of sentences of death or imprisonment for life.

Tasdiqi- i- wasiqajat on which His Highness the Maharaja Bahadur commands are required by law.

FINANCE AND POLICE MEMBER

Finance.

Treasuries.

Accounts,

Audit.

Stamps.

Kashmir Valley Food Control.

Police.

Police special Reports, such as Accidents, Riots, Arrival and suspicious movements or actions of visitors.

Co-operative Credit Societies.

MEMBER FOR COMMERCE AND INDUSTRIES

Forests.

Sericulture, Silk Weaving and Mulbery Culture.

Mineral Survey.

Commerce and Industries.

Excise.

Customs.

Stationery.

Industrial Education.

Printing Presses.

Agriculture and Horticulture.

PUBLIC WORKS MEMBER

Irrigation.

Roads and Buildings.

Electrical Department.

Mechanical Department.

RULES FOR CONDUCT OF BUSINESS IN THE COUNCIL

The Rules for the conduct of business in the Council shall Be as follows:

1. Every case to be submitted to Council shall be sent to the Council Secretary by the Member concerned. The Member concerned shall see that a complete Precis of the case is drawn up, and that his own opinion and the opinions of the Head of the Department or Heads of Departments subordinate to him and affected by the question at issue are duly recorded.

In every case in which financial issues are involved, the opinion of the Finance Member shall be obtained by the Members concerned and submitted with the case to Council.

When it is proposed to sanction, amend, or repeal any regulation, rule, law, order or notification the opinion of the Law Member shall be obtained by the Members concerned and submitted with the case to Council.

In every case which directly affects more than one Member of Council, the Member submitting the case shall see that the opinion of the other Member or Members directly concerned and the opinion of the Heads of the Department affected are duly obtained and recorded before the case is referred to Council.

The Council Secretary shall prepare, in the order of the receipt, a list of all cases received from Members in the prescried and complete form, he shall then draw up the Agenda for the Council Meeting: as a general rule, no case shall be entered in the Agenda unless it has been received at least four clear days before the next meeting is due to take place.

When the Agenda has been drawn up, copies shall be submitted to His Highness and forwarded to every Member at least 48 hours before the time fixed for the Meeting of Council except in emergent cases.

Except as provided for in Rule 16, the Council shall: assemble as such time and place as may be appointed by His Highness the Maharaja Bahadur or the Presiding Member. The Secretary shall inform all Members of the time and place so appointed for the meeting.

The Council shall, as far as may be practicable meet on two consecutive days in every fortnight, but arm matter of special urgency requiring immediate disposal may be dealt with at an extraordinary meeting which may be called at any time by His Highness the Maharaja Bahadur in the manner provided in Article 20.

Three Members shall constitute a quorum.

If a Member is unable to attend any meeting, he shall notify the fact in writing to the Secretary.

The business of the Council shall be transacted in English.

If any Member desires postponement of the consideration of any case, it shall be postponed, unless His Highness the Maharaja Bahadur or the Presiding Member, for reasons to be recorded, rules otherwise.

All cases so postponed shall be taken up at the subsequent meeting of Council if practicable.

Any cases not disposed of at a meeting of Council shall be taken up at the next meeting if practicable.

Should the Council decide to refer any question to a Select Committee, the Chairman and the other Members of the Committee shall be appointed by the Council. The Council may authorise any such Committee to record evidence or to summon representatives of any class or community.

In all cases discussed in the Council, if there be no difference of opinion, the decision of the Council shall be recorded in the form of a Resolution. If opinion be divided, the question shall be put to the vote and the opinion of majority shall be recorded in the form of resolution, the Presiding Member being entitled to a casting vote in the event of the votes being equally divided, but in all cases where the decision is not unanimous, the opinion of every Member shall be separately recorded.

The proceedings of such Council meeting as are held in the absence of His Highness the Maharaja Bahadur shall be submitted by the Council Secretary to His Highness for his sanction and no resolution shall come into force until and unless it has been sanctioned by his Highness. Should His Highness disapprove of any Council Resolution arrived at during his absence he will command the Council Secretary to direct the Members of Council to attend at such time and place as his Highness may appoint for discussion in his presence of the subject involved. His Highness will preside and after the Member have been given the opportunity of explaining their views, His Highness will announce his decision in Council as to whether the Resolution shall be confirmed or disallowed.

All orders of the Council shall be issued in the name of His Highness in Council and shall be signed by the Secretary.

The proceedings of the Council shall be reduced to writing in the form of proceedings which shall be signed by all the Members present at the meeting concerned and shall also be recorded by the Secretary in a Minute Book, which shall be signed by His Highness the Maharaja Bahadur.

In the absence of His Highness the Maharaja Bahadur the duties assigned to him under these rules shall be discharged by the Member Senior amongst the Members present at the meeting subject to the provisions of Article 16.

Under orders of His Highness the Maharaja Bahadur any papers requiring immediate disposal shall be circulated by the Council Secretary amongst the Members of the State Council for their opinion, on receipt of which the case shall be laid before His Highness for commands, which will be communicated to the Member concerned. Such cases shall in due course be recorded in the Council proceedings in a complete form. No member shall retain a case so circulated for more than 2 days.

Note: - All the Members of Council and Secretaries attending Council meetings, shall do so in black Achkans or black morning or frock coats

DUTIES OF THE SECRETARY OF THE COUNCIL

to receive all papers submitted to the Council;

to prepare and circulate the Agenda of Business and to give due notice of meeting to Members;

to return cases to Members which have not been submitted in a complete form as laid down in Rules 1 to 4;

to record the proceedings of Council;

to obtain His Highness sanction to the Resolutions of such Council meetings as are held in his Highness absence;

to issue to the Members concerned the Resolutions of Council without loss of time;

to furnish each Member with a copy of the printed proceedings;

to comply with requisitions made by the Members of the Council;

to see that reports called for by the Council are promptly sent for from the Department concerned;

to supervise the working of the office and be responsible for the custody and maintenance of records;

the Secretary, subject to appeal to Council shall have complete control over his office establishment including the superintendent, in the matters of appointment, suspension, leave, punishment and promotion;

he shall be responsible for the custody of the seal of the Council and for tile maintenance of the usual office registers, a list of pending references and the Minute Book of proceedings of the Council;

in all cases in which the Secretary sees no objection, copies of Resolution of the present and the late State Council and of His Highness orders passed in the interim between the abolition of the old Council in 1905 and the constitution of the new Council in January in 1922 if applied for, may be given by him to applicants without reference to Council;

The Council Secretary shall be empowered to authorise fluctuating expenditure and to pass travailing allowance bills of his subordinate establishment within the allotments provided;

The Council Secretary shall dispose of notices served on the Government under Section 79, 80, 82 (i), 89 (i) order XXVII Rules 2,3,4,5 and 8 order XLI, Rule 7 and appendix XIX (2) of the Civil procedure code, vice Council Resolution No. 72 dated the 4th September 1922.

45 State Subject Definition Notification

20th April, 1927

Legal Document No 44

No. I-L/84. - The following definition of the term "State Subject" has been sanctioned by his Highness the Maharaja Bahadur (vice Private Secretary's letter No. 2354, dated the 31st January, 1927 to the Revenue Member of Council) and is hereby promulgated for general information.

The term State Subject means and includes -

Class I. - All persons born and residing within the State before the commencement of the reign of His Highness the late Maharaja Ghulab Singh Sahib Bahadur, and also persons who settled the rein before the commencement of samvat year 1942, and have since been permanently residing therein.

Class II. - All persons other than those belonging to Class I who settled within the State before the close of samvat year 1968, and have since permanently resided and acquired immovable property therein.

Class III. - All persons, other than those belonging to Classes I and II permanently residing within the State, who have acquired under a rayatnama any immovable property therein or WIZO may hereafter acquire such property under an ijazatnama and may execute a rayatnama after ten years continuous residence therein.

Class IV. - Companies which have been registered as such within the State and which, being companies in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of His Highness been declared to be State subjects.

Note I. - In matters of grants of the State scholarships State lands for agricultural and house building purposes and recruitment to State service, State subjects of Class 1 should receive preference over other classes and those of Class 11, over Class III, subject, however, to the order dated 31st January, 1927 of his Highness the Maharaja Bahadur regarding employment of hereditary State Subjects in Government service.

Note II. - The descendants of the persons who have secured the status of any class of the State Subjects will be entitled to. become the State Subject of the same class. For example, if A is declared a State Subject of Class II his sons and grand sons. will ipso facto acquire the status of the same Class (II) and not of Class I.

Note III. - The wife or a widow of a State Subject of any class shall acquire the status of her husband as State Subject of the same Class as her husband, so long as she resides in the State and does not leave the State for permanent residence out-side the State.

Note IV. - For the purpose of the interpretation of the term 'State Subject' either with reference to any law for the time being in force or otherwise, the definition given in this Notificaticn as . mended up to date shall be read as if such amended definition existed in this Notification as originally issued.

NOTIFICATION

(Issued by order of His Highness the Maharaja Bahadur dated Srinagar, the 27th June 1932, (14th Har, 1989, published In Government Gazette dated 24th Har, 1989).

No.13L/1989. - -Whereas it is necessary to determine the status of Jammu and Kashmir State Subjects in foreign territories and to inform the Government of Foreign States as to the position of their nationals in this state, it is hereby commanded and notified for public information, as follows:

That all emigrants from the Jammu and Kashmir State to foreign territories shall be considered State Subjects and also the descendants of these emigrants born aboard for two generations.Provided that, these nationals of the Jammu and Kashmir State shall not be entitled to claim the internal rights granted to subjects of this State by the laws, unless they fulfill the conditions laid down by those laws and rules for the specific purposes mentioned therein.

The foreign nationals residing in the State of Jarnmu and Kashmir shall not acquire the nationality of the Jammu and Kashmir State until after the age of 18 on purchasing immovable property under permission of an ijazatnama and on obtaining a rayatnama after ten years continuous residence in the Jammu and Kashmir State as laid down in Notification No.-l-L. of 1984, dated 20th April, 1927.

Certificates of nationality of the Jammu and Kashmir State may, on application, be granted by the Minister-in Charge of the Political Department in accordance with the provision of section I of this Notification.

46 Jammu and Kashmir Government Notification Order No.1

26th March 1928

Legal Document No 45

Whereas it is expedient to establish a High Court of Judicature for the Jammu and Kashmir State, His Highness the Maharaja Bahadur is pleased to command as follows:

That with effect from the fifteenth day of Baisakh Samvat One thousand nine hundred and eighty five, the High Court of Judicature Jammu and Kashmir State shall be constituted and shall consist of a Chief Justice and two or more Judges, as His Highness the Maharaja Bahadur may from time to time, think fit to appoint. One of the Judges shall have revenue experience and shall be styled Judge High Court and Revenue Commissioner. The Chief Justice and every Judge of the High Court of Judicature shall hold office during His Highness the Maharaja Bahadur's pleasure.

The said Court shall henceforth be styled the Court of judicature Jammu and Kashmir State.

- **Oath of Office**

The Chief Justice and every Judge of the High Court of Judicature previously to entering upon the execution of the duties of their respective offices shall make and subscribe the following declaration before His Highness the Maharaja Bahadur, or such officer as may be appointed in this behalf:

"I …… appointed Chief Justice (or a Judge) of the High Court of Judicature Jammu and Kashmir State, do solemnly declare that I will administer Justice according to the law and usage of the Realm, without fear or favour, affection or ill-will".

- **Seal**

The High Court of Judicature shall leave and use, as occasion may require, a seal bearing a device and impression of the Jammu and Kashmir Court of Arms with an exergue or label surrounding the same, with this inscription, "The Seal of the High Court of Judicature Jammu and Kashmir."

The said seal shall be delivered to find kept in the custody of the Chief Justice or of an officer of the court from time to time nominated by the Chief Justice.

- **Writs etc.**

All writs, summons, precepts, rules, orders and other mandatory processes to be used, or issued or awarded by the High Court of Judicature shall run and be in the name and style of His Highness the Maharaja Bahadur and shall be sealed with the seal of the Court.

- **Original Jurisdiction.**

The High Court of Judicature shall have jurisdiction to hear and determine any original proceeding, or any suit of which the value is not less than Rs. 10,000 and notwithstanding anything contained in Section 15 of the Code of Civil Procedure of Samvat Year 1977, every such suit or proceeding shall be instituted in the High Court of Judicature. Provided that nothing in this Clause shall affect the Provisions of Section 24 of the Code of Civil Procedure of Samvat year 1977, in respect of a suit, appeal, or other proceeding pending before a court subordinate to it to try or dispose of the same.

The High Court of Judicature shall be deemed for the purposes of all enactments, for the time being in force, to be the highest Civil Court of appeal and revision.

The High Court of Judicature shall be the highest court of Criminal appeal.

The High Court of Judicature shall be empowered to hear and decide such revenue appeals as may be specified by general or special orders of His Highness in this behalf and shall be deemed to be the highest court of revenue appeal.

- **Jurisdiction by Judges of the Court**

Except as otherwise provided by any enactment for the time being in force, and subject to any rules made under this order, with the sanction of His Highness the Maharaja Bahadur, the jurisdiction of the High Court of Judicature may be exercised by a single Judge of the Court or by a bench of two or more Judges of the Court.

Revenue appeals and revisions shall first be heard by the Revenue Commissioner sitting alone and appeals, against his decisions shall lie to a bench consisting of two other Judges of the Court.

Subject to the provisions of clause (b) above, the Chief Justice shall determine which judge in each case shall sit alone and which Judges of the Court shall constitute a bench.

- **Appeals from Civil Jurisdiction**

Except as otherwise provided by any enactment for the time being in force, an appeal from any original decree, or from any order against which an appeal is permitted by any law for the time being in force, made by a single Judge of the High Court of Judicature shall lie to a bench consisting of two other judges of the Court.

- **Ram of decision when Judges differ**

- When there is a difference of opinion among the Judges composing any bench of the High Court of Judicature the decision shall be in accordance with the opinion of the majority of the Judges.

- if there is no such majority then:

- If the bench is a full bench, the decision shall be in accordance with the decision of the Senior Judge, and

- In other cases the bench before which the difference has arisen shall either refer the question to a full bench, or refer the whole case for decision to the full bench.

- **Power to refer question to a full bench or a bench**

- Any single Judge and any bench of two Judges of the High Court of Judicature, not being a full bench, may, in any case, refer for the decision of a full bench any question of law, or custom having the force of law, or of the construction *of* any document, or of the admissibility of any evidence, arising before the Judge or the bench and shall dispose of the case in accordance with the decision of the full bench.

- Any Judge of the High Court of Judicature may if he thinks fit, refer any appeal or application coming before him for hearing as a single Judge to a bench of two Judges for decision.

- **Superintendence and control of subordinate courts**

- Subject to such rules and regulations as His Highness the Maharaja Bahadur may be pleased to frame in this behalf, the general superintendence and control over all courts shall be vested in, any they shall be subordinate to, the High Court of Judicature.

- The Chief Justice or a Judge of the High Court of Judicature appointed by him, shall from time to time visit and inspect the proceedings of the courts subordinate to the High Court of Judicature and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of Justice.

- **Ministerial Officers**

- The High Court of Judicature may, subject to the sanction of His Highness the Maharaja Bahadur, and on such terms as to salary, allowance, promotion, leave, suspension and dismissal, as may be sanctioned by His Highness the Maharaja Bahadur, appoint a Registrar, a Deputy Registrar, and such other Ministerial officers as may be necessary for the administration of justice by the Court and for exercise and perfoinZance of the powers conferred, and duties imposed on it by this order, or by any other enactment for the time being a force.

- The Officers so appointed shall exercise such powers and discharge such duties as the High Court of Judicature may direct.

- The High Court of Judicature may delegate to the Registrar, the Deputy Registrar, or both, such judicial, quasijudicial or administrative powers as it may deem fit.

- **Appointments and powers of subordinate Judicial Officers**

- The appointments of the District and Sessions Judges, Subordinate Judges and Munsiffs shall be made by His Highness the Maharaja Bahadur on recommendation of the High Court of Judicature.

- The High Court of Judicature shall have power to! transfer and grant leave to subordinate Judges and Munsiffs.

- The High Court of Judicature may, subject to the sanction of His Highness the Maharaja Bahadur, grant leave to, and transfer District and Sessions Judges and may confer civil and criminal powers according to law on District and Sessions Judges, subordinate Judges, Munsiffs, District Magistrates, Sub-Divisional Magistrates and other officers exercising judicial functions.

- The High Court of Judicature shall have no independent power of punishment, such as reduction, suspension and dismissal of judicial officers, but it shall have the powers to enquire into cases of misconduct and submit its recommendations for the orders of His Highness the Maharaja Bahadur.

- **Place of sitting**

The usual places of sitting of the High Court of Judicature shall be Jammu and Srinagar.

- **Special commissions and circuit**

Whenever it appears to the Chief Justice convenient that the jurisdiction and power vested hl the High Court of Judicature by this order or by any other law for the time being in force, should be exercised in any place within the jurisdiction of any court subject to the superintendence of the High Court of Judicature other than the usual places of sitting of the High Court of Judicature or at several such places by way of circuit, one or more Judges of the High Court of Judicature shall hold court at such place or places.

- **Requisitions by His Highness the Maharaja Bahadur**

The High Court of Judicature shall comply with such requisitions, as may, from time to time, be made under the commands of His Highness the Maharaja Bahadur for records, returns and statements.

- **Confirmation of sentences**

Cases requiring confirmation of sentences of death or of imprisonment for life shall be submitted to His Highness the Maharaja Bahadur for confirmation in accordance with the provision of the Code of Criminal procedure.

- **Power to make rules**

(a) The High Court of Judicature, may with the sanction of His Highness the Maharaja Bahadur, and after l revious publication and consistently with the provisions of the codes of civil and criminal procedure and of any other law in force for the time being, make rules.

to regulate the practice of the court.

to regulate the practice of the courts subordinate thereto.

to provide for the forms to be used in the High Court of judicature and the courts subordinate thereto for such proceedings, hooks, entries, statistics, and accounts as it thinks fit.

to provide for the inspection of courts subordinate thereto and the supervision of the work thereof.

to regulate all such matters as it may think fit with a view promote the efficiency of the judicial and ministerial officers of the High Court of Judicature and of the courts subordinate thereto, and the maintaining of proper discipline among those officers.

Such rules shall be made with the approval of a majority of the Judges of the Court.

- **Admission of Advocates, etc.**

The High Court of Judicature shall have the power to approve, admit and enroll advocates, vakils and attorneys-at-law subject to a limit fixed by His Highness the Maharaja Bahadur.

The High Court of Judicature shall have power to make rules, from time to time, with the sanction of His Highness the Maharaja Bahadur, for the qualification and admission of proper persons to be advocates, vakils and attorneys-at-law of the High Court of Judicature and it shall also have the power to remove or suspend from practice, on reasonable clause, the said advocates, vakils and attorneys-at-law

- **Contempt**

All appeals, revision and other judicial proceedings pending on the civil or criminal side of the High Court on the date on which this order comes into force, shall be continued, heard and determined in the High Court of Judicature for the Jammu and Kashmir State according to law.

All appeals and revisions against the decrees and orders of the High Court of which any competent authority may be seized on the date on which this. Order comes into force, shall be transferred to the High Court of Judicature as constituted by this order for final disposal.

All appeals, revisions and reviews against the judgements and orders of the H;QI1 Court which can and may be duly filed on and after the date on which this order comes into force shall be entertained and finally disposed of by the High Court of Judicature.

Revenue appeals and revisions pending before His Highness or in the Court of the Revenue Minister may, by His Higllness' general or special orders, be transferred for decision to the High Court of Judicature.

All pending applications for the review of the orders of His Highness the Maharaja Bahadur in appeal or revision against the orders of the High Court or of the Revenue Minister or such applications as may be presented hereafter till this order comes into force, will be dealt with and disposed of as heretofore.

No Judge of the High Court of Judicature sitting in a full bench thereof, notwithstanding anything to the contrary provided anywhere, shall by reason of his having decided or otherwise dealt with anycase referred to in clauses (a), (b). (c), (d) and (e) above, be barred from hearing and deciding the same.

- **Consequential changes**

Consequent on the promulgation of this order, all the changes required to bring the existing laws, regulations or enactments into conformity with the provisions of this order shall be made at as early a date as possible with the sanction of His Highness the Maharaja Bahadur.

- **Royal prerogative.**

Nothing herein contained and nothing contained in any other law for the time being in force, shall be deemed to affect in any way, or derogate from the inherent power and prerogative of His Highness the Maharaja Bahadur or to affect in any way his prerogative of mercy and pardon, or his power of remitting, commuting or reducing sentences conditionally or otherwise, or to bar the full and unqualified exercise of His Highness the Maharaja Bahadur's pleasure in calling for the record of any case or proceeding whether pending before or decided by, the High Court of Judicature or any court subordinate thereto, or to pass such orders thereon as may be in accordance witl1 the law and usage of the Realm and consonant with the dictates of justice, equity and good conscience.

Except as provided by this order, there shall be no appeal or revision against the decree and orders *of* the High Court of Judicature for Jammu and Kashmir State.

47 Statement of Maharaja Hari Singh on Butler Committee

Legal Document No 46

(Extract)

They (Princes) had imagined a committee different alike in composition and functions from that which ultimately materalised. It was expected that round a nucleus of English statesmen of reputation, there would be grouped representatives of the Government of India, of British India and of the Indian States together with financial, constitutional and political experts. Two things Inhere uppermost in their minds; firstly, they had become painfully conscious that what was called political practice whitted away rights, which they believed to have been safeguarded by treaties: secondly, they found their position was one of considerable uncertainty, not merely in regard to their future relations with a self governing British India, but also in regard to their present relation with the Government of India. They were anxious to find out precisely where they stood, where their rights began and those of the Paramount power ended so that they might take stock of the part they were called upon to play in greater India which they saw shaping before their eyes, but the Committee from the very nature of its personnel and restricted lines of reference could not conduct an examination satisfactorily. The Committee by its own admission was not a judicial tribunal. This was conclusive evidence that the State could not receive at its hands that kind of award which was their principal reason for asking for an enquiry at all."

48 Statement of Maharaja Hari Singh, Round Table

Legal Document No 47

(Extract)

"**Allied** by treaty with the British Crown and within our territories, independent rulers, we have come with a full sense of responsibilities to our State and all India. As the allies of British we stand solidly by the British connection. As Indians and loyal to the land of our birth, we stand as solidly as the rest of our countrymen for our land's enjoyment of a position of honour and equality in the British Commonwealth. Our desire to cooperate to the best of our ability with all sections of the Conference is genuine, as also is our determination to base our cooperation upon the realities of the present situation.

Neither England nor India can afford to see this conference end in failure. We must resolve to succeed. Difficulties shall not be insuperable. We must exercise patience, tact and forbearance and be inspired by mutual understanding and goodwill and we must give and take. The task is gigantic. In case of no people would such an aim as ours be easy to accomplish. In case of India, complexity of factors is unique but by the grace of God and with good will and sympathy on both sides difficulties shall be surmounted and with the words of the King Emperor still ringing in our ears, we Princes affirm that the Conference shall not fail "through any fault of ours."

49 Presidential Address of Dr. Sir Muhammad Iqbal

Delivered at the Allahabad Session of the All India Muslim League

December 1930

Legal Document No 48

(Extract)

What is the problem and its implications? If religion a private affair? Would you like to see Islam, as a moral and political ideal, meeting the same fate in the world of Islam as Christianity has already met in Europe? Is it possible to retie in Islam as an ethical ideal and to reject it as a polity in favour of national politics, in which religious attitude is not permitted to play any part? This question becomes of special importance in India where the Muslims happen to be in a minority. The proposition that religion is a private individual experience is not surprising on the lips of a European. In Europe the conception of Christianity as a monastic order, renouncing the world of matter and fixing its gaze entirely on the world or spirit. led by a logical process of thought, to the view embodied in this proposition. The nature of the Prophet's religious experience. us disclosed in the Quran, however, is wholly different. It is not more experience in the sense of a purely biological event happening inside the experiment and necessitating no reactions on his social environment. It is individual experience creative of a social order. Its immediate outcome is the fundamentals of a polity with implicit legal concepts whose civic significance cannot be belittled merely because their origin is revelational. The religious ideal of Islam, therefore, is organically related to the social order, which it has created. The rejection of the one will eventually involve the rejection of the other. Therefore, the construction of a polity on national lines, if it means a displacement of the Islamic principle of solidarity is simply unthinkable to a Muslim. This is a matter which at the present moment directly concerns the Muslim of India. "Man", says Renan, "is enslaved neither by his race, nor by his religion, nor by the course of rivers nor by the directions of mountain ranges. A great aggregation of men, sane of mind and warm of heart, creates a moral consciousness which is called a nation".

Such a formation is quite possible, though it involves the long and arduous process of practically remaking men and furnishing them with a fresh emotional equipment. It might have been a fact in India if the teaching of Kabir and Divine Faith of Akbar had seized the imagination of the masses of this country. Experience, however, shows that the various caste-units and religious units in India have shown no inclination to sink their respective individualities in a larger whole. Each group is intensely jealous of it collective existence. The formation of the kind of moral consciousness which constitutes the essence of a nation in Renan's sense demands a price which the people of India are not prepared to pay. The unity of an Indian nation, therefore, must be sought, not in the negation, but in the mutual harmony and cooperation of the many. True statesmanship cannot ignore facts, however, unpleasant they may be. The only practical course is not to assume the existence of a State of things which does not exist, but to recognise facts as they are and to exploit them to our greatest advantage. And it is on the discovery of India Unity in this direction that the fate of India as well as of Asia really depends. India is Asia in miniature. Part of her people have cultural affinities with nations in the east and part with nation, in the middle and west of Asia. If an effective principle of cooperation is discovered in India, it will bring peace and mutual goodwill to this ancient land which has suffered so long, more because of her situation in historic space than because of any inherent incapacity of her people. And it will at the same time solve the entire political problem of Asia.

It is however, painful to observe that our attempts to discover such a principle of internal harmony have so far failed.

Why have they failed ? Perhaps, we suspect each other s intentions and inwardly aim at dominating each other. Perhaps, in the higher interests of mutual cooperation, we cannot afford to part with the monopolies

which circumstances have placed in our hands, and conceal our egoism under the cloak of a nationalism, outwardly stimulating a large-hearted patriotism but inwardly as narrow-minded as a caste or a tribe. Perhaps, we are unwilling to recognise that each group has a right to free development according to its own cultural traditions. But whatever may be the cause of our failure, I still feel hopeful. Events seem to be tending in the direction of some sort of internal harmony. And as far as I have been able to read the Muslim mind, I have no hesitation in declaring that if the principle that the Indian Muslims entitled to full and free development on the lines of his own culture and tradition in his own Indian homelands is recognised as the basis of a permanent communal settlement, he will be ready to stake his all for the freedom of India. The principle that each group is entitled to free development on its own lines is not inspired by any feeling of narrow communalism. There are communalisms and communalisms. A community which is inspired by any feeling of ill-will towards other communities is low and ignoble. I entertain the highest respect for the customs, laws, religious and social institutions of other communities. Nay, it is my duty, according to the teaching of the Quran, even to defend their places of worship if need be. Yet I have the communal group which is the source of my life and behavior; and which has formed me what I am by giving me its religion, its literature, its thought, its culture, and thereby recreating its whole past, as a living operative factor, in my present consciousness. Even the authors of the Nehru Report recognise the value of this higher aspect of communalism. While discussing the separation of Sind they say:

'To say from the larger viewpoint of nationalism that no communal Provinces should be created is, in a way, equivalent to saying from the still wider international view-point that here should be no separate nations. Both these statements have a measure of truth in them. But the staunchest internationalists recognises that without the fullest national autonomy it is extraordinarily difficult to create the international State. So also, without the fullest cultural autonomy, and communalism in its better aspect is culture it will be difficult to create a harmonious nation.'

Communalism, in its higher aspect, then, is indispensable to the formation of a harmonious whole in a country like India. The units of Indian society are not territorial as in European countries. India is a continent of human groups belonging to different races, speaking different languages and professing different religions. Their behaviour is not at all determined by a common race, consciousness. Even the Hindus do not form a homogeneous group. The principle of European democracy cannot be applied to India without recognizing the fact of communal groups. The Muslim demand for the creation of a Muslim India within India is, therefore, perfectly justified. The resolution of the All-parties Muslim Conference at Delhi is, to my mind, wholly inspired by this noble ideal of a harmonious whole which, instead of stifling the respective individualities of its component wholes, affords them chances of fully working out the possibilities that may be latent in them. And I have no doubt that this house will emphatically endorse the Muslim demands embodied in this resolution. Personally I would go -further than the demands embodied in it. I would like to see the Punjab, North-West Frontier Province, Sind and Baluchistan amalgamated into a single state. Self-Government within the British Empire, or without the British Empire, the formation of a consolidated North-West Indian Muslim State appears to me to be the final destiny of the Muslim, at least of North West India. The proposal was put forward before the Nehru Committee. They rejected it on the ground that, if carried into effect, it would give a very unwidely state. This is true in so far as the area is concerned; in point of population the State contemplated by the proposal would be much less than some of the present Indian Provinces. The exclusion of Ambala Division and perhaps of some Districts where non-muslims predominate will make it less extensive and more Muslim in population so that the exclusion suggested will enable the consolidated state to give a more effective protection to non-Muslim Minority ties within its area. The idea need not alarm the Hindus or the British. India is the greatest Muslim country in the world. The life of Islam as a cultural force in this country very largely depends on its centralization in a specified territory.

It is clear that in view of India's infinite variety in climates, races, languages, creeds and social systems, the creation of autonomous States, based on tile unity of languages race, history, religion and identify of economic interests, is the only possible way to secure a stable constitutional structure in India. The

conception of federation underlying the Simon Report necessitates the abolition of the Central Legislative Assembly as a popular assembly, and makes it an assembly of the representatives of federal states. It further demands a redistribution of territory on the lines which I have indicated. And the report does recommend both. I give my wholehearted support to this view of the matter, and venture to suggest that the redistribution recommended in the Simon Reports must fuel two conditions. It must precede the introduction of the new Constitution and must be so devised as to finally solve the communal problem. Proper redistribution will make the question of joint and separate electorates automatically disappear from the constitutional controversy of India. It is the present structure of the provinces that is largely responsible for this controversy. The Hindu thinks that separate electorates are contrary to the spirit of true nationalism, because he understands the word nation to mean a kind of universal amalgamation in which no communal entity ought to retain its private individuality such a state of things, however, does not exist. Nor is it desirable that it should exist. India is a land of racial and religious variety. Add to this the general economic inferiority of tile Muslims, their enormous debt, especially in the Punjab and their insufficient majorities in some of the provinces as at present constituted, and you will begin to see clearly the meaning of our anxiety to retain separate electorates cannot secure adequate representation of all interests, and must inevitably lead to the creation of an oligarchy. The Muslims of India can have no objection to purely territorial electorates if Provinces are demarcated so as to secure comparatively homogeneous communities possessing linguistic racial cultural and religious unity.

To my mind a unitary form of government is simply unthinkable in a self-governing India. What is called "residuary power must be left entirely to self-governing states, the Central Federal States exercising only those powers which are expressly vested in it by the free consent of federal states. I would never advise the Muslim of India to agree to a system, whether of British or of India origin, which virtually negatives the prince pies of true federation or fails to recognize them as a distinct political entity.

I have no doubt that if a Federal Government is established, Muslims will willingly agree. for purposes of India's defence, to the creation oft, neutral military and naval force. Such a neutral military force for the defence of India was a reality in the days of Mughal rule. Indeed in the time of Akbar the Indian frontier was, on the whole, defended by armies officered by Hindu generals. I am perfectly sure that the scheme of a neutral Indian army, based on a federated India will intensify Muslim patriotic feeling, and finally set at rest the suspicion, if any of Indian Muslim joining Muslims from beyond the frontier in the event of an invasion.

I have thus tried briefly to indicate the way in which the Muslims of India ought in my opinion to look at the two most important constitutional problems of India. A redistribution of British India, calculated to secure a permanent solution of the communal problem is ignored then I support, as emphatically as possible. The Muslim demands repeatedly urged by the All India Muslim League and All India Muslim Conference. The Muslims of India cannot agree to any constitutional changes which effect their majority rights, to be secured by separates electorates, in the Punjab and Bengal or fail to guarantee them 33 per cent representation in any Central Legislature.

No Muslim politician should be sensitive to the taunt embodied in that propaganda word-communalism-expressly devised to exploit what the Prime Minister calls British democratic sentiments and to mislead England into assuming a State of things which does not really exist in India. Great interests are at stake we are seventy millions and far more homogeneous than any other people in India. Indeed the Muslims of India are the only People who can fitly be described as a nation in the modern sense of tile word. The Hindus, though ahead of us in almost all respects, have not yet been able to achieve the kind of homogeneity, which is necessary for a nation, and which Islam has given you as a free gift. No doubt they are anxious to become a nation, but the process of becoming a nation is a kind of travail, and in the case of Hindu India, involves a complete overhauling of her social structure. Nor should the Muslim leaders and politicians allow themselves to be carried away by the subtle but fallacious argument that Turkey and Persia and other Muslim countries are progressing on national, i.e. territorial, lines. The Muslims of India are differently situated. The countries of Islam outside India are practically wholly Muslim in population. The minorities there belong, in the language of the Quran, to the people of the book. There are no social

barriers between Muslims and the "People of the Book". A Jew or a Christian or a Zoroastrian does not pollute the food of a Muslim by touching it, and the law of Islam allows inter-marriage with the "people of the Book". Indeed the first practical step that Islam took towards the realization of a final combination of humanity was to call upon people possessing practically the same ethical ideal to come forward and combine. The Quran declares, "O people of the Book; Come, let us join together on the "word" (Unity of God), that is common to us all". The word of Islam and Christianity, and European arression in its various forms, could not allow the infinite meaning of this verse, to work itself out in the world of Islam. Today it is being gradually realized in the countries of Islam in the shape of what is called Muslim Nationalism.

50 Proclamation of Maharaja Hari Singh

July 9, 1931

Legal Document No 49

TO MY BELOVED PEOPLE

From time immemorial all communities within the State have been living on terms of closest harmony and friendship with each other and I used to take the greatest pride in the fact that we were happily from all communal strife. I am, therefore, greatly pained to see that quite recently owing to external influences a changed and regrettable attitude is observable in certain sections in the cities of Jammu and Srinagar. This is greatly to be deplored. Two unfortunate incidents which occurred recently in Jammu city and which could not by any stretch of imagination be associated with any action or policy of my Government and for which the responsibility rested solely on the persons involved have been seized upon and widely misrepresented aside and outside the State so as to convey to those who are not in a position to know the true facts that the policy of my Government is such that Islam is in danger. It is not my intention to deal with the details of these incidents in this message as they are being dealt with separately. So far I have preferred that my Government be judged by its actions alone. But numerous representations from my loyal subjects of all sects and creeds have reached me within the last few days to the effect that such agitation even though at present it Ends no response generally is calculated to promote communal strife and might even lead to breaches of the public peace in some cases. It has accordingly been deemed necessary to make this formal announcement of the policy and intention of myself and my Government in regard to such propaganda asked communal relations within the State generally.

As the beginning of my rule I announced to you, my people, that my religion is justice. That announcement has guided all my public acts and policies and I shall always adhere to it. I have not made, and will not permit, any discrimination against any class of my people on the grounds of religion The humblest of my subjects has free and direct access to me and any grievances my people may have can be submitted by them personally to me. Subject to tom fundamental conditions, viz.,

that political activities are confined within the law of the land, and

that no outside intervention is sought in any shape or form.

I have no desire whatever to suppress the legitimate requests and voice of my people whether expressed in writing or in speech It is my inention to give effect to these views but I am unable to do so, so long as communal tension exists' for fear of aggravating it. Consequently, the first essential is that the leaders of the various communities should take immediate action to put a stop to all political activities tending to prevent tile re-establishment of friendly relations between them. As soon as it is reported to me that any community has faithfully responded to my desire, I shall be prepared to receive and consider most sympathetically any re-presentation that community may desire to submit to me.

Every person within the State is, and shall always be, free to practice his own religion, subject to the paramount necessity of maintaining public peace and public order. I particularly wish to refer in this connection to a malicious rumour now being spread that cow killing is shortly going to be permitted. This malicious rumour has no foundation whatever. And it has given me great pleasure to receive from Muslim subjects spontaneous condemnation of such an insinuation or any other insinuation likely to injure the religious susceptibilities of any other community. There is no question whatever of making any change in the matter.

In regard to recruitment for the State services prior consideration is and shall always be given to the public interest and the obligation of maintaining the efficiency of the administration at the highest possible level can never be overlooked. There is also no desire to follow a blind rule of percentages for the various communities irrespective of considerations of qualification and merit. Subject to these conditions' the policy governing recruitment will be such that no class or community should gain undue predominance Al any branch of the public service and that adequate representation is secured to duly

qualified. Hereditary State Subjects from all classes and communities of my people. Instructions to this effect have been recently issued and I shall watch closely their practical execution by my officers.

I have dealt above in a brief manner with what I conceive to be points of major importance with regard to which some misunderstanding prevails in certain quarters. I trust such misunderstanding will be dispelled by this authoritative enunciation of my beliefs and intentions with regard to these points. It is my aim to carry on the administration in consonance with these views in your best interests. Whenever I have found that any of you have been led into wrong action, I have always tried to make you see the error of your ways and to win you over to the right path by reasoning and conciliation. I am not a believer in false ideas of prestige, for I hold that just action is a sign of strength and not of weakness. But should, God forbid, all appeal to reason fail, I must disch~.rge in effective manner the supreme responsibility which rests on me for the maintenance of law and order. I cannot chow my Government to be coerced by threat into unjust action and it is my duty to protect the law-abiding sections of my people from encroachments on their lawful rights. The immediate burden of maintaining law and order necessarily falls on the Magistracy and the Police whose duty it will be to see that the law is upheld at all costs, and where the law is defied, its authority will be restored. It is the duty of the Police to act impartially and with calm judgement in such emergencies and I wish to assure them that they will be supported by myself and my Government in the due discharge of their duty and will not be sacrificed to unjust clamour or intrigue.

In conclusion, I trust that the old policy of 'live and let live' which characterized your relations with each other in the past will be restored It is easy to excite public feeling by misrepresentation, but it is difficult to restore harmony and friendship. Do not attribute false motives to those placed in authority over you or to one another. As regards people outside the State, whether Hindus or Mohammedans, I ask them not to interfere in any way in matters concerning my State and my people, as I do not interfere in matters concerning British India and British Indians. The whole basis of political action is impaired if one political unit interferes in the demostic concerns of another. I do not wish to claim immunity from legitimate criticism of the acts and policies of my Government, which, I have no hesitation in saying, have always been designed to promote the moral and material progress of my people. It is my duty and my one aim in life to maintain the progressive character of my administration. But this end is defeated by unjustifiable outside intervention which has, within the last few weeks, done nothing but immense harm to the true interests of you all. I pray to God that you will receive the light of truth and wisdom and that you will live peacefully and happily with one another as before.

"Sd. HARI SINGH, G.C.I.E., K.C.V.O., A.D.C.,
Maharaja of Jammu and Kashmir.

51 Report of the Kashmir Constitutional Reform Conference

1932

Legal Document No 50

The most important issues which the Conference has examined are as follows:

(a) Is it desirable that there should be a Legislative Assembly?
(b) If so,

What should be the functions of such an Assembly,

What should be the franchise basis, and

How should the Assembly be composed.

As regards the first of these questions, it will be seen from the proceedings that there has been some difference of opinion. In regard to the functions of the proposed Assembly something closely approaching unanimity has been achieved. So far as the other main issues are concerned, there has been a: very considerable divergence of views, especially with regard to the composition of the Assembly. This divergence is hardly surprising, considering the conflicting interests which different members have represented. There appeared unfortunately to be no hope whatsoever of attaining any semblance of a unanimous finding on these points, and it was therefore agreed that there was no prospect of submitting a joint report. The Chairman accordingly forwards his owns recommendations, referring, as may be necessary, to the opinions put forward on behalf of various interests: the proceedings recorded will show that the recommendations made, follow in general the joint views expressed, where there has been a consensus of opinion: where opinions have differed endeavours have been to bear in mind the legitimate interests of all communities concerned.

The full purport of the draft recommendations has been read out in Urdu at a meeting held on the 7th of April so as to provide an opportunity for the suggestion of modifications or amendments; any such suggestion received has been given due attention, and each member has been informed by letter of the final recommendations which are being made in regard to the composition of the Assembly after further consideration of the views put forward.

ESTABLISHMENT OF A LEGISLATIVE ASSEMBLY

Certain members have, it will be seen from the proceedings, expressed considerable misgivings as to the wisdom of such an innovation at the present time, in view of tine disturbed conditions which have unhappily been prevailing.

The general feeling is, however, in favour of such an. experiment being tried.

It appears highly desirable that the subjects of the State should be given a voice in the administration and in view of the announcement already made by His Highness in tl.is behalf there would seem to be no room for doubt as to the action which should be taken in this respect.

It is recommended that a Legislative Assembly should be established as soon as may be practicable.

POWERS AND FUNCTIONS OF THE ASSEMBLY

The proceedings will show that a virtually unanimous opinion has been expressed at the Conference in Favour of the functions of the Assembly being defined as follows:

LEGISLATION

Subject to the final assent of His Highness the Maharaja Bahadur the Assembly should have power to make laws.

GOVERNMENT BILLS.

All Government bills except such bills, if any, as relate exclusively the reserved subjects (namely (1) the person or privileges of His Highness or members of the Ruling Family, (2) foreign relations, (3) the discipline and control of the State Forces) should be referred to the Assembly and should not become law until ratified thereby provided that:

His Highness should in case of emergency retain full power to make and promulgate ordinances for the good government of the State and any such ordinances should be operative for a period of six months unless repealed by His Highness at an earlier date.

His Highness should, where he considers it necessary in the interests of good government, have power to certify any bill which the Assembly may decline to pass.

PRIVATE BILLS

The introduction of any private bill should be allowed and the bill, if passed, should, subject to His Highness' final assent, become law provided that:

no such bill shall relate to reserved subjects as already defined;

unless the previous approval of His Highness' Government has been obtained, no bill shall involve the imposition of new taxation or the enhancement or reduction of axisfing taxation;

no bill shall affect the religious rites, usages, ens downments or personal law of any community other than to which the proposer belongs; a bill affecting the usages etc. of that community only which the proposer represents may be introduced if not less than two thirds of the elected members of their community are in favour thereof, and if the previous permission of His Highness for the introduction of such a bill has been obtained;

no bill shall involve the imposition of disabilities on any class or community as such;

no bill shall affect the rights specifically granted to to Jagirdars, Pattadars, etc. in their Sanads or Pattas;

unless the previous sanction of His Highness' Government has been obtained no bill shall be introduced which it is intended to apply to any Illaqa or Jagir to which the State laws are not ordinarily applicable.

His Highness shall have the power of referring back any bill to the Assembly for further consideration or amendment.

The above proposals, representing, as already remarked, the practically unanimous opinion of the Conference, are recommended for adoption.

Various other suggestions have been put forward; it has been suggested for instance that no bill should be introduced (a) which affects the privileges o} Rajputs as such or (b) which affects any class of non-state subjects residing in the Jammu and Kashmir State.

There does not appear to be any sufficiently strong reason for adopting these suggestions. In regard to the rights of non-State subjects for the purposes of the Assembly, opinion is expressed below.

QUESTIONS AND RESOLUTIONS

Questions and resolutions should be permitted without restriction provided that:

they do not relate to reserved subjects as already defined;

they do not affect the religious rites, usages, endowments or personnel law of any community other than that to which the member asking the question or moving the resolution belongs; such questions or resolutions may, however, be allowed with the special permission of the President of the Assembly, who should, where he considers it necessary, refer the matter for the orders of His Highness;

they do not relate to the merits of cases under enquiry by a court of law.

Supplementary questions should be allowed.

PERIOD OF NOTICE

In the case of questions, thirty days' notice should ordinarily be given, so as to afford due opportunity for the supply of the information required. The President should have the power to reduce this period where it may be necessary.

In the case of private bills, a similar period of thirty days' notice should be given, and the member wishing to introduce a bill should forward a copy thereof together with a statement of the objects and reasons.

In regard to resolutions fifteen days, notice should be given.

In the case of any bills, resolutions of questions for which previous sanction is necessary, an additional period of fifteen days' notice over and above the minimum period ordinarily prescribed should be required.

BUDGET

The President should appoint certain days prior to the announcement of the State financial year (at present the first of Katik or mid-October) for the discussion of the State Budget In the Assembly.

A week before the first date so appointed, a copy of the budget and a brief explanatory statement thereof in Urdu should be forwarded to each member of the Assembly. Members should on the dates appointed be given full opportunity to ask questions and make suggestions relating to any part of the budget with the exception of reserved subjects.

No kind of new taxation should be imposed without reference to the Assembly; the grant of monopolies etc. which amount in themselves to the imposition of new taxation should be treated in the same manner.

FREEDOM OF SPEECH IN THE ASSEMBLY

Speeches delivered in the Assembly should be privileged and should not be actionable. It should be the function of the President to intervene in the case of exceptionable remarks.

In regard to the above points, namely questions and resolutions, period of notice, budget procedure and freedom of speech, the proposals recorded above represent the general consenus of opinion expressed at the Conference, and their Adoption is recommended accordingly.

STANDING COMMITTEE

It has been suggested that simultaneously with the creation of the Assembly, a non-official Standing Committee should be appointed and that the policy of Government in regard to finance, public health, etc. should be explained to the members of such Committee and their opinions on these point should be Ascertained.

This is a development which might well take place after a suitable period has elapsed. It appears advisable, however, that it should be deferred until the Assembly has actually been created and some experience of its working has been gained.

FRANCHISE

It is generally agreed that the number of voters on the Electoral roll should amount approximately to ten per cent of the total population, a ratio which has frequently been adopted as the working rule in British India. In order to achieve this object the appointment of a Franchise Committee or some Organization corresponding thereto will be necessary. Information is unfortunately lacking as to the number of people likely to be entitled to vote if different kinds of qualifications are adopted; the proposals put forward are therefore merely tentative and suggested as a temporary expedient.

As a working basis for the time being, various qualifications have been suggested. It will be observed the proceedings that opinions have differed to a marked extent in this respect

For instance, the views given in respect to land revenue qualifications have varied between Rs. 10 payment and Rs. 50 payment per annum; in respect to immoveable property between Rs. 500 and Rs. 2000 in value, and in regard to educational qualifications between Middle pass and Graduate standard.

It is recommended that in the four following cases, the standards now prescribed for the right of voting at Municipal elections may be adopted as franchise qualifications in regard to the Assembly:

Payment of land revenue not less than Rs. 20 per annum.

Possession of immoveable property not less than Rs. 1000 in value.

Membership of a learned profession, such as the Medical or Legal profession, etc.

The receipt of a Government pension of not less than Rs. 25 per month.

In addition to the above it is recommended that any of the following additional qualifications should also be regarded as. sufficient:

Payment of Municipal taxes not less than Rs 20 per annum.

Title holders, Zalidars, Lumberdars and Safed-Poshes.

Jagirdars and Pattadars enjoying an assignment of not less than Rs 50 per annum.

Educational standard Matriculate or corresponding vernacular standard.

The qualifications suggested above would appear to be sufficient for the present. It does not appear advisable to provide for further qualifications in the way of annual income, payment of house-rent or payment of customs as there will be difficulties in the way of satisfactorily verifying such qualifications.

The same qualifications for membership or the Assembly as those recommended for franchise might be adopted.

DISQUALIFICATIONS

It is recommended that the following should be regarded as disqualified for purpose of franchise:

Females.

Persons below the age of 21.

Person certified as insane.

Undischarged bankrupts or insolvents.

Persons convicted by a criminal court of an offense punishable with imprisonment for a term exceeding six punishable with imprisonment for a term exceeding six months, provided that if a period of five years has elapsed, since the termination of the sentence, the disqualification shall cease to operate.

Persons who are at the time of the election under orders by a competent court to provide security for good behaviour.

Persons, other than State-Subjects, who have not been domiciled in the State for a consecutive period of five years immediately preceding the time of the election.

With regard to the latter disqualification. it has been represented on the one hand that only State subjects as now defined should have the right to vote and that on the other hand that one year's residence in the State should be sufficient of qualify for franchise and that the present definition of "State subject" should be discarded all purposes. It is not within the scope of the Conference to consider the appropriateness of the existing definition of "State subject" for general purposes. As regards qualification for the franchise, however, though there is every reason for upholding the prior claims to State subjects in general, the present definition appears to be unduly rigid; domicile in the state for a thousand years cannot according to the definition qualify a man to become a hereditary State subject. It would seem both unfair and inexpedient to deny the right of franchise to a man who has so far identified himself with local interests as to make his domicile in the State over a consecutive period of five years. As one member of the Conference has aptly expressed it, man can beret sons, he cannot beget his ancestors.

Some Members have given their opinions in favour of an experiment in the direction of female suffrage. But the general consensus of opinion is against this departure. In view of the backward condition of female education it appears adviseable to defer for the present any proposal of this nature.

In regard to disqualifications for elected membership of the Assembly, it is recommended that the same standards as those proposed above in the case of franchise should be adopted with the following additions or modifications:

Persons below the age of 25 (instead of 21 as in the case of franchise).

Persons not on the electoral roll.

Persons unable to read, write and understand the court language, namely Urdu.

Persons actually in the service of Government.

Dismissed Government servants, provided that the disqualification in this respect may be removed by the specific orders of Government.

Persons, other than first class State subjects as now defined who have not been domiciled in the State for a consecutive period of fifteen years, immediately preceding the time of the election.

In the case of this letter disqualification, the remarks already made in connection with the question of State subjects should suffice.

It will be observed from the proceedings that there has been a fair approach to unanimity in regard to the question of disqualifiations.

COMPOSITION OF THE ASSEMBLY

Elected Members.

In the absence of detailed information in regard to the number of persons likely to be qualified to vote on the basis suggested above, a rough guide can be afforded by the population statistics as recorded in the Census which has recently taken place. Once again it may be pointed out that the proposals put forward are only tentative and may be found to require considerable modification when statistics have been collected showing the approximate voting strength of various classes and communities.

The total population of the State is recorded as roughly 36-1/2 lakhs. Excluding the Poonch and Chenani Jagirs and certain distinct Frontier Illaqas such of as Hunza and Nagar which are in certain respects withdrawn from the scope of the ordinary State machinery, the population comes to approximately 32 lakhs. If Ladakh and Gilgit proper are also excluding there would be a further reduction of about 2-1/4 lakhs. The general feeling of the Conference is that Ladakh and Gilgit proper should not be excluded for the purposes of the Assembly. It is true that these tracts are comparatively backward, also that they are cut off at certain times of the year; they from however, an integral part of the State for ordinary purposes and except in the winter months communications are open.

It is clearly undesirable that the Assembly should be composed of so large a number of members as to become unwieldy. A working basis in regard to the number of elected members would seem to be provided by the allotment of one such member to every lakh of the population. On this basis there would be 32 elected members in all.

JOINT OR SEPARATE ELECTORATES

One important question that arises is whether electrorates should be separate or joint. It will be observed that there has been a general consensus of opinion at the conference in favour of separate electorates. Some members have pointed out that, although the establishment of separate electorates has some times been regarded as responsible for increasing communal tension in British India, the acute communal feeling which unhappily prevails in the State at the present time can certainly not be ascribed to this cause; it has been maintained that in the case of the Srinagar Municipality the introduction of joint electorates has enhanced the feeling of antagonism and distrust between the different communities. It would appear that in the existing state of tension, the institution of joint electorates must be regarded as a dangerous experiment. It is obviously adviseable at the present time to avoid as far as possible all superfluous elements of danger. Separate electorates are accordingly recommended,

There has been a consensus of opinion on the point that there should be no plural voting. The place at which a voter should record his vote should depend upon the locality in which he normally resides at the time of the election.

In regard to the allocaion of elected seats in the Assembly among the various communities widely different views have been put forward. It has been claimed on the one hand that at least 25 seats out of 32

should be allotted to Muslims, who number 75 per cent. Out of the populatoin of the part of The State with which it is proposed that the Assembly should be concerned. On the other hand it has been represented that there should be two elected Hindu members to every one Muslim. And special claims have been but forward on behalf of the particular classes or communities, such as Sikhs and Rajputs and also on behalf of the depressed classes.

The two main communties are Muslims and Hindus. The population of these two communities stated

	Hindus	Muslims
JAMMU PROVINCE		
Jammu Wazarat excluding Jammu City.	1,37,000	1,93,000
Jammu City.	12,000	24,000
liathua Wazarat.	40,000	1,21,000
Reasi Wazarat	1,55,000	79,000
Udhampur Wazarat	1,17,000	1,56,000
Mirpur Wazarat	2,78,000	57,000
Total Jammu	**7,39,000**	**6,30,000**
KASHMIR PROVINCE		
Southern Kashmir excluding Srinagar City.	5,75,000	20,000
Srinagar City	1,39,000	34,000
Northern Kashmir	5,43,000	11,000
Muzaffarabad	2,22,000	4,000
Total Kashmir	**14,79,000**	**69,000**
FRONTIER PROVINCE		
Ladakh	1,53000	300
Gilgit Proper	31,000	1,000
Total	**1,84,000**	**1,300**
Grand Total	**24,02,000**	**7,00,300**

in round numbers is as follows for the various portions of the State which it is proposed to take into consideration.

Buddhists who are almost entirely confined to the frontier districts of Ladakh amount to 39,000. Sikhs whose numbers are more or less equally divided between the provinces of Jammu and Kashmir, also come to 39,000.

If population is strictly followed, Muslims, whose ratio works out at 75 per cent, should get 24 out of 32 elected seats and Hindus, who come to 22 per cent should be given 7, Budhists and Sikhs would hardly qualify for one seat between them.

The principle of "weightage" has, however, to be taken into account in order to safeguard the interests of minor communities. This principle has been fully recognised in British India. In the United Provinces for instance Muslims, whose number only a little more than 14 per cent of the population, have been given not less than 29 per cent of elected seats in the Legislative Council. In Bombay non-Muslims, whose numbers amount to nearly 79 per cent of the population, have been reduced in the matter of elected seats to a bare majority. Responsible Mohammadanopinion has teen expressed in favour of the principle of "weightage" being applied to the State Assembly provided that Muslims are allowed to retain an actual majority in the matter of elected seats.

A fair solution would appear to be provided by allowing to Hindus sufficient '\veightage" to bring their number of elected seats in the Assembly upto 33-1/3 per cent Muslims would in this case be awarded a fraction over 60 per cent while Sikhs and Buddhists would each be given just over 3 per cent.

It has been claimed that not less than 4 seats should be allowed to Sikhs, or, failing that, two' one for Jammu and one for Kashmir. It is true that, as has already been remarked, the Sikh population is scattered over the two Provinces. It is also true that the behaviour of the Sighs has been exemplary during the recent disturbances and that they are fully deserving of consideration, but, as far as the State is concerned, they are relatively a very small community and it is difficult to allot them more than one elected seat without unduly affecting the interests of others. It is suggested that their aspirations might be met by the practice of including among the nominated members one Sikh member coming from that province to which the elected Sikh member does not belong. This should be sufficient to provide for the reasonable requirements of the community as the Sikh representative at the Conference has explained, the Sikhs are not striving for power in the State, they only desire that their voice should be heard. The only other alternative that seems possible is to increase by one the total number of elected members, this would of course disturb the general ratio.

In the case of the Buddhists one elected seat should suffice. As mentioned above, the Buddhist community is practically confined to one portion of the State and it is doubtful what their actual voting strength will prove to be.

Some difficulty is to found in deciding how effect is to be given to the "weightage" proposed for Hindus. It is true that the great bulk of the Hindu population belongs to the Jammu Province, but there are obvious objections in the way of allotting them a larger number of seats in that Province, than can be given to Muslims, who even in Jammu are more numerous shall Hindus. The most satisfactory solution appears to lie in giving the "weightage" its main effect in the Kashmir Province; although the Hindus in Kashmir are relatively small in numbers, they are a highly advanced community and it is to be expected that their population would suggest.

It is not proposed that any elected seats should be reserved for the depressed classes. In the census the depressed classes are recorded as Hindus, and there appears to be no sufficient reason for according them different treatment from that received by them in the Punjab, where no special reservation obtains.

It is recommended that the total number of elected seats should be 33 and that they should be distributed as follows:

	Muslims	Hindus	Buddhists	Sikhs
JAMMU PROVINCE				
Jammu City	1	1	0	0
Jammu	1	2	0	0

Wazarat				
Kathua Wazarat	1	1	0	0
Udhampur Wazarat	1	1	0	1
Reasi Wazarat	1	1	0	0
Mirpur Wazarat	2	1	0	0
Total Jammu Province	**7**	**7**	**0**	**1**
KASHMIR PROVINCE				
Srinagar City	3	2	0	0
Southern Wazarat	3	1	0	0
Northern Wazarat	3	1	0	0
Muzaffarabad	2	0	0	0
Total Kashmir Province	**11**	**4**	**0**	**0**
FRONTIER PROVINCE				
Gilgit proper	1	0	0	0
Ladakh	1	0	1	0
Total Fontier	**2**	**0**	**1**	**0**
Total State	**0**	**11**	**1**	**1**

Here again there has been a great difference of opinion, the proposals put forward by various members for the proportion of nominated to elected seats vary between 25 per cent and 150 per cent.

It would seem a fair solution that the total number of nominated members should be equal to two thirds of the number of elected members, namely 22. and that in addition to these His Highness the Maharaja Bahadur should, if he sees fit to do so, appoint his ministers, not exceeding 5 in number; as ex-officio members. The total membership of the Assembly would thus be limited to 60 (33+22+5). In regard to the nominated members, not less than one third should be nonofficials; apart from His Highness should have entire discretion in their matter of nomination. There has been a general consensus of opinion, however, expressed at the Conference that nomination should be so regulated as to provide as far as possible for the representation of interests which are not specially catered for in the elected membership, such for instance as Jagirdars and commercial interests.

If the above recommendations are adopted, there would be a clear erected majority and there would be a proportion of not less than two non-official members to the one official member.

PRESIDENT OF THE ASSEMBLY

It is recommended that the Assembly should be presided over by the Prime Ministers or such other Ministers as His Highness may be pleased to appoint for the purpose.

NUMBER AND PLACE OF MEETINGS

A part from any special meetings which it may be found necessary to call, it is recommended that there should be two regular meeting of the Assembly a year, one at Srinagar in the month of Assuj (September-October) when the budget proposals amongst other matters can be discussed, and one at Jammu in the month of Phagan (February-March) or such other time as may be convenient.

LIFE OF THE ASSEMBLY

The life of the Assembly should, it is recommended be fixed at three years in the first instance.

Rules relating to the number necessary to form a quorum and other matters of comparatively minor importance can be provided for suitable in the bye-laws.

It is recommended that the Assembly should have no power to propose an alteration in the enactment creating the Assembly unless the previous approval of His Highness is obtained through the President.

DISTRICT BOARD

Apart from the question in creating a Legislative Assembly the subject of District Boards and Municipalities has also been raised at the Constitutional Conference.

At present there are no District Boards in the State. There has been a general consensus of opinion expressed at the Conference in favour of a beginning being made in this matter in the following way.

Wazirs or District Officers should once every year call a meeting of all the Zaildars in their District. The Tehsildars and the Road Cess Overseer should also be present. The Wazir should make known the amount of funds available from the Road Cess Fund for expenditure in the Wazarat, he should ascertain from those present the requirements of the various Zilas and he should then proceed to make allotments after taking into consideration the views expressed. Zaildars should at the same time be given an opportunity to put forward their views in regard to other matters such as Schools, Medical Relief, Sanitation, etc.

In the case of districts in which distances are great and communications indifferent, such as for instance the Udhampur Wazarat which includes Kishtwar, Bhaderwah and Ramban, it may be difficult to summon Zaildars to District headquarters without causing them undue inconvenience; in such cases the Wazir should make a point of consulting Zaildars at convenient places when he proceeds on tour.

It has been agreed at the Conference that it is inadvisable to hold more than one such meeting a year at the headquarters. Of a Wazarat, as it is believed that, if the number of such meetings is multiplied, many Zaildars will be unwilling to attend. It has been pointed out that under present conditions Zaildars are put to much inconvenience in visiting District headquarters. because there is no suitable building in which they can be accommodated; this is a matter which should receive the attention of the State authorities.

MUNICIPILITY

The following views in regard to Municipalities have been' expressed and deserve consideration.

ELECTORAL

It is considered that the electoral rolls should be revised in such a way as to make the numbers recorded thereon equivalent to about ten per cent of the total population of each Municipality. At present the number of voters appears to be considerably less than this in the case of Srinagar city.

SEPARATE ELECTORATES

In view of the opinions expressed in regard to the undesirable effects of joint electorates in the matter of communal tension it is suggested that the question of substituting separate electorates should receive attention.

NUMBER OF ELECTED MEMBERS

It is recommended that the proportion of elected members who now form 50 per cent of the total, should be slightly increased so as to provide for an elected majority. An increase in the total number of Municipal members does not appear to be desirable in the interests of efficiency.

EXTENSION OF POWERS

It is understood that the Municipal Committee of Srinagar

has already put forward proposals to the Minister-in-Charge for an increase of powers, and that the matter is under the consideration of His Highness' Government; and early decision appears to be desirable.

NON-OFFICIAL PRESIDENT

The proposal that Municipalities should be presided over by a non-official is far from meetting with universal approval. No recommendation in this direction appears at present to be justified.

DELAY IN AWARDING COMPENSATION

It is represented that Municipal Committees at present allow great delay to occur in paying compensation for property acquired etc. Endeavours should be made to expedite the disposal of such cases.

(Sd) B.J. Glancy
President
Constitutional Reforms Conference

52 Report of the Franchise Committee

1933

Legal Document No 51

In the order dated 31st May 1932, His Highness the Maharaja Bahadur in Council accepted the recommendation of the President of the Kashmir Constitutional Reforms Committee, Mr. Glancy, and appointed a Franchise Committee. Observing from Mr. Glancy's Report that the Reforms Conference had only been able to put forward tentative suggestions regarding the important question of the franchise and of the composition of the Assembly, His Highness in Council instructed the Franchise Committee to examine the different kinds of qualifications and disqualifications for the franchise and for elected membership of the Assembly and to submit recommendations on matters referred to in that Report and on - any other matters which as a result of the Committee's enquiries appeared to be germane to the subject. The Committee was authorised to collect statistics, to receive representations and to examine witnesses.

The Committee was composed of the following Members:

1. Sir Barjor Dalal, Kt., I.C.S. (Retd.)	President
2. Mr. L.W. Jardine, I.C.S	Vice President
3. R.B. Sardar Thakur Kartar Singh Ji,	Member
4. K.B. Sheikh Abdul Qayum	Member

With Mr. Ram Nath Sharma, Registrar High Court. As Secretary.

On the 24th March 1933, Sir Ivo Elliott, I.C.S. (Retd.) was appointed Franchise Officer and replaced Mr. Jardine as Member of the Committee.

Owing to the pressure of his ordinary work Mr. Ram Nath Sharma left the Secretaryship and Mr. Hira Nand Raina was appointed Secretary to the Committee. To both these gentlemen the Members of the Committee desire to express their thanks, and especially for their arrangements in the examination of witnesses.

The Committee first met on the 8th of June 1932, to discuss procedure. We paid special attention to the need for securing the widest possible attention of the public to the points which we had been instructed to examine. A proceedings of the Committee were published in the Gazettee and in October 1932, the Committee issued a Questionnaire as a further help to witnesses in covering the whole ground of Enquiry. The 3rd October 1932 was the earliest date by which we could expect witnesses to prepare written statements and to give oral evidence, and we hoped to hear the Srinagar witnesses in this month. Very few of them, however, were able to attend at the date fixed and the hearing of evidence in Kashmir had to be postponed to the 1933 season, though the Committee took the opportunity of examining some witnesses at Muzaffarabad and Baramulla. The Committee heard evidence in Jammu in April 1933 and in Srinagar in May 1933.

Full publicity was given to the proceedings; the written statements of witnesses were read in open Committee and the witnesses were then orally examined. The Committee also permitted any persons present at the meeting to ask questions from the witness on the points on which they had given their evidence.

The list of the witnesses examined and of some individuals who were only to submit written statements is given in Appendix 1. The list comprises representatives of every community in Jammu and Kashmir and we are satisfied that we have been made acquainted with the opinions of most parties and classes in the State. We should have welcomed some further assistance at Srinagar from the "Jammu and Kashmir Muslim Conference." We were informed by the President of the Conference on 16th May 1933 that in fact the Conference did not propose to add anything to the statements made in the Memorial of 19th October 1931. That Memorial was earlier in date than the proceedings of the Constitutional Reforms Conference, which it was our special duty to supplement by more detailed enquiries, and as the particular statements in it were no more than two very short paragraphs expressed in the most general terms, the

President in his letter of the 17th May 1933 invited the Conference to submit evidence on the points of detail in the manner which had been indicated by our Questionnaire and which had been followed by our other witnesses whether speaking in a personal or representative capacity. We were promised that a member of the working committee of the Conference would send in a written statement and give evidence, but this was not done.

Our Questionnaire, which in its arrangement closely followed the points in Mr. Glancy's Report on the Constitutional Reforms Conference, has probably been more helpful to our witnesses than it has been to us. It enabled them or the associations which they represented to say yes or no to a number of isolated propositions. But we have been disappointed at the failure in too many cases to give reason for the answer or even to ensure that the answer to one question was consistent with the answer to another. This failure was due in part no doubt to the divergent nature of the questions which we had asked in our Questionnaire and in particular the function of constituencies; but we must regret that so few witness sawtheneed for basing their answers on some general and consistent scheme which would embrace all interests. It was not enough at this stage to put forward the maximum claims of a community, to express ignorance of or indifference to the claims of any other community and to make no attempt to reconcile these different claims in one coherent scheme. Yet this has been a general feature of the evidence.

It is a matter of interest that on only one of the main points which we had to examine were our witnesses absolutely unanimous; all agreed in preferring direct election to any form of indirect election. Only one witness advocated manhood suffrage. For the rest there was an extreme divergence of opinion and this divergence has been mainly on a communal basis.

We have therefore been faced with the same exaggeration of communal claims and fears which made the Constitutional Reforms Conference abortive and prevented any of its Members from putting their signatures to Mr. Glancy's Report. We think then that it would be helpful if we begin by examining what appears to us to be the chief cause of this exaggeration, namely the excessive attention which has been given to the idea. We certainly cannot call it the principle - of enfranchising 10 per cent of the total population. This idea rests on mix-apprehension and indeed on mix-statement.

Mr. Glancy began that part of his report with which we are chiefly concerned by saying; "it is generally agreed that the number of voters on the electoral roll should amount approximately to ten per cent of the total population a ratio which has frequently been adopted as the working rule in British India." This is not correct; it is not a working rule. The reports of the Statutory Commission and of the Indian Franchise Committee show that the existing system in British India has enfranchised a percentage which varies from 1.1 in Bihar to 3.9 in Bombay. The British Indian Provinces have been accustomed for many years to election either for the local self-governing bodies or for the Councils, and it is because there has been this experience with the smaller experience, an advance towards adult franchise. It was for conditions which were still in the future that the Statutory Commission suggested 10 percent as a possible figure which would educate a\\ider electorate, that the Provincial Governments with some hesitation prepared to arrange for number of electors, and that tile Indian Franchise Committee developed their further proposals.

There is no virtue whatever in the ratio of 10 per cent it is an arbitrary figure which has been suggested as a rough measure of the advance which can be made practically towards adult suffrage in a country where years of experience of a restricted franchise have made some advance possible. It would be entirely against constitutional history to lay so much stress on the total numbers of men, women and children, or in other words to think in terms of adult suffrage, in a country which has never yet had any wide-spread electoral system. In the first stages of constitutional progress the chief element is not the individual men, it is the constituency. When the Ruler has desired to associate his Government, he has had two ways of securing a competent and representative body of advisers. A part from his own officials there are prominent and capable men whose advice he would obviously require for legislation, and whom he can summon by name to his Council, and these have often been the nucleus of a second Chamber. But as the Kingdom advances there is more need for the specific representation of local interests, and more important men of local areas are required to elect their members to supplement the nominees. What these

local are as should be, has never been determined by some exact measurement of men and women through a census of even by the allotment of an exact number of enfranchised voters to each seat; the local areas have determined themselves by their history and form of administration. Historically it has been the towns which usually have been the first to secure elected representation, as the concentration of trade in them has given them importance and they have had some special administration which has made it less reasonable that there interests should be represented only by the big land holders who have been called by the Ruler to his Council. Elected representation of the country apart from the town, belongs to a later stage, and when it has been granted, the territorial units have differed very largely in size in every country where representative Govt. has been established, and these differences still continue. It is only at a very advance stage of progress, namely when adult suffrage is becoming possible, that there has come the idea of making the constituencies more equal in size or number of the total population, and even now as the example of many democratic countries shows, equality cannot be reached, and the constituency remains more important than the census.

It is from these considerations of normal constitutional growth that we hold that it has been a misapprehension to lay so such stress on the idea of enfranchising 10 per cent of the total population, apart from the actual misstatement of describing this ratio as a working rule. We propose to base our recommendations on the constituencies; and for this reason we deal first with the composition of the Assembly before `\e proceed to discuss the franchise; but our scheme will show that we have also given appropriate weight to the numerical facts, though we have been careful not to exaggerate their importance.

The facts about the constituencies can be stated very shortly. There are the two cities. Jammu and Srinagar, which havespecial importance as in them are concentrated wealth, trade, education and the learned professions. There are ten Wazarats, Jammu, Udhampur, Reasi, Kathua, Mirpur, Kashmir North, Kashmir South, Muzafferabad, Ladakh and Gilgit. We have been informed in the Prime Minister's letter that the Jagirs should be included in the constitutional scheme. Chenani is small but has entirely separate interests which must be represented. This Jagir and Poonch bring the number of rural constituencies to twelve. There can be no question of including the Frontier Ilaqas outside Ladakh and Gilgit.

On these facts, and with historical reasoning behind us, we might with advantage consider a first hypothesis of what would be a justifiable constitution. It would be possible to recommend that His Highness the Maharaja Bahadur's first Legislative Assembly, for the exercise of powers such as Mr. Glancy has foreshadowed, might well consist of thirty two members. Sixteen of these would be summoned by name by His Highness from those of his subjects who were most eminently fitted to be State Councillors; sixteen would be elected representatives, one from each of the rural constituencies, and two from each the cities; in this point we should be giving weightage, to the interests of the cities, but weightage to the factors of wealth and learning has always preceded weightage for mere numbers in the stages before it becomes possible to be constituted to form a Sound nucleus for further development, when the political progress of the State made it possible to give greater responsibilities to the Legislature; the elected representation of the cities and districts could be increased so as to form a large Assembly; and the State Councillors would from the nucleus of a second Chamber or Council such as we consider might be required in the interest of the State as a whole in a more advanced type of constitution.

Such an Assembly would also have the merit of being comparable to that which has been established in the State of Bhopal. a State which resembles this State in certain essential factors. Bhopal has an Assembly of 74 members, only eight of whom are elected, and of these two members represent the city and two represent trade. Our Assembly of 39 members, 16 of whom u ould be elected, would be in advance of the Bhopal constitution and while giving weightage, as in Bhopal, to the urban interests, would give far greater representation to the agricultural population.

We are faced, however, by other local facts in Jammu and Kashmir, in particular the great diversity of the population. which compel us to go beyond our first hypothesis' though we retain its general principle. To m et these facts we must propose a greater number of representative members. In thus enlarging the

Assembly on the lines which we state below we are aware that we are recommending a greater advance over constitutions such as that of Bhopal, but we do not think that this will be unwise.

The diversity of the population can best be stated in the following table which shows to the nearest thousand of the adult males over 20 years of age in each of our proposed constituencies and in each of the principal communities. There is such general agreement that women cannot be enfranchised to any large extent that we require only the figures adult males. The figures for districts are exclusive of the cities:

Constituency	Muslims	Hindus	Sikhs	Buddhists
Jammu	37	56	2	
Udhampur	31	46		
Chenani	1	3		
Reasi	39	24		
Kathua	11	35		
Mirpur	71	15	2	
Kashmir North	135	4		
Kashmir South	156	7	1	
Muzaffarabad	56	1	3	
Poonch	82	6	3	
Ladakh	41			12
Gilgit	8	1		
Jammu City	5	9		
Srinagar City	39	10		

In the rural districts the result) of an election on any conceivable system Of franchise, if only one member was to be elected, would be the election of a Muslim member in five Wazarats and in Poonch, and of a Hindu in Kathua and Chenani. In Jammu, Udhampur and Reasi the result would be uncertain and this uncertainty could not fail to be reflected in communal competition which would be dangerous to the peace. We, therefore, recommend that each of these three constituencies should have two elected members, one for the Muslim electorate and one for the Hindu.

But if Jammu, Udhampur and Reasi return two members each, it would be to great an anomaly to leave Mirpur, Northern and Southern Kashmir and Poonch each with only a single member, and although we do not attach the first importance to this factor of population, it would be an almost equally great anomaly if in these four districts the second member were to be elected by the minority communities which are negligible in numbers compared with the minorities in Jammu, Udhampur and Reasi. The second member in these four districts must clearly be a Muslim.

If however the Assembly is to embrace all local interests we must provide for the representation of the smaller minorities also, if they are to be divided from the major community and formed into separate electorates, as Mr. Glancy and the great majority of our witness, Muslim, Hindu and Sikh, are recommended. The 15,000 Hindus of Mirpur and the 11,000 Muslims of Kathua might each elect a

member without straining over much the idea of weightage. The groups of Hindus in the three Kashmir districts are very much smaller, but they are to a very large extent homogeneous, and they have a high degree of literacy. For the small minority in Poonci1 the best course will be for the Ilaqadar to nominate a representative of the Hindus. In Chenani the numbers are so small that although there must be special representation, a system of election is not really justified, still less a system of separate electorates, and we feel that in this case also it will be wiser to ask the Ilaqadar to nominate his representative. But while we thus provide for the minorities by election or nomination according to their size, we must also in fairness to the majority community, be mindful of our principle of giving some weight, though in a less degree to the numbers of adult male population. We follow the same course of giving an extra elected member for a large group and an extra nominated member for a smaller group and we propose that where any community has more than 40,000 adult men to each elected member, there should be an additional elected member for each 40,000 and an addition d nominated member for part of 40,000 greater than 5000. This scale would give a third elected member both to Kashmir North and Kashmir South, both from Muslim electorate and extra Muslim nominated member to each of the three Kashmir Districts, and an extra Hindu nominated member to Jammu and Udampur. Where a Wazarat or Ilaqa is allotted two or more members under this scheme, and the population is practically homogeneous, we think that the representation would be more effective if it were divided by Tehsils, roughly in accordance with the population figures, into single member constituencies. This would also make the conduct of the election much easier by decreasing. The number of candidates for any one constituency. We recommend that these constituencies should be as follows:

District	Constituency	Adult Muslims
Mirpur	Bhimbar	25
Poonch	Mirpur Kotli	46
	Haveli-Mendhar	42
	Bagh-Sudhnuti	39
	Handwara (Uttarma-chipura)	62
Kashmir North	Baramulla	34
	Badgam (Sri PartapSinghpura)	49
	Tehsil Khas Pulwama	69
	Anantnag	33
Kashmir South	Kulgam	54

Although there is inevitably some inequality in the population of the different units we believe that this scheme would give excellent representation to local interests, and we are opposed to any readjustment of boundaries in order to equalize population, as the limit of the Tehsils are well known to everyone. The provision of three extra Muslim seats for the three districts of Kashmir Province will enable His Highness to nominate representatives of any Muslim elements for which the electoral system does not provide.

In the evidence given to us at Jammu we have heard with great interest and sympathy the claims of the Megh Community, and our conclusion is that the Meghs have real grounds for being specially considered, without however, being in any way separated from the mass of the Hindus. A comparison of the figures in

the last two census shows that there must hl 1931 have been some concealment of membership of this caste and their real numbers; this is one of the most important caste groups in the State. We also observe that the great majority of the Meghs are localized in Jammu and Udhampur Wazarats.

We have recommended that each of these Wazarats should have an extra Hindu membernominated; Jammu has 16,000 and Udhampur 6,000 adult males in excess of 40,000 but these communities would not come on to our scale for extra members, were it not for the approximately 9,000 Megh adults in Jammu and 7,000 in Udhampur and also members of other castes which are elsewhere called the depressed classes. It is, therefore, as a measure of obvious fairness that we suggest that in these two constituencies the extra Hindu members to be nominated should be chosen from the Megh community. We make no other recommendation for the representation of the depressed classes; such a step would not be suitable in this first stage of constitutional representation, and the case for making it is not strong if the action which we recommend on behalf of the Meghs is taken, as they are by far the most important of the communities of this type.

We have hitherto referred to representation of Ladakh and Gilgit in the same terms as in the case of the other districts, but we feel that it will be impossible to hold elections in these frontier districts until much greater experience of the conduct of elections has been acquired. Those of our witnesses who have stated that elections could be held now in Ladakh and Gilgit have clearly been speaking without any knowledge of the actual process of election and have made light of administrative difficulties which they have not attempted to examine. These difficulties will be considerable in other parts of the State, but in Ladakh and Gilgit the rigours of the climate, the immense area the wide dispersion of inhab ted sites and the extreme difficulty of communications between them make it a present impossible for a limited and entirely inexperienced staffto conduct an election. We must, therefore, recommend that at least until experience of election has been gained the members for Ladakh and Gilgit should be nominated and not elected. Our scale would give one Muslim and one Buddhist member to Ladakh and one Muslim member to Gilgit; but in view of the scattered and divers population of Ladakh we recommend that two Muslim and two Buddhist members should be nominated for that Wazarat. One of the Muslim members should represent Skardu Tebsil and the other Kargil.

We have provided members by nomination for the Buddhist and, as part of the Hindu representation, for the Megh community. A community which requires special consideration is that of the Sikhs. and we have given a careful hearing to the claims put forward their behalf, claims which have some justification from the fact that the numbers of the Sighs, 12,365 adult males, are certainly not commensurate with their wealth, activities and general place in the State. The Sikhs are far less localized than are either the Buddhists or the Czechs, and it is difficult to fit their groups into our scheme of constituencies; yet the Sikh witnesses have laid stress on the fact that the two members suggested by Mr. Glancy could not properly represent local groups which live in such diverse conditions, and this has led them to make extravagant claims which admitted, have ignored every other consideration except the communal. After examining this point of the local distribution of the Sikhs, we think that it would not be unfair to assign them to three groups. firstly those of Mirpur and Poonch (4,800 adult males) whose circumstances are very similar; secondly those of Muzaffarabad and of the Baramulla and Uttarmachipura Tehsil (3,800 adults); and thirdly the Sikhs of the rest of the State (3,700 adults) who no where from any large local group, but have some general importance in business and industry.

We cannot treat these three groups as one body for the purpose of electing a member, like the Kashmiri Hindus whose groups in the three districts are living in the same condition in far easier contact one with the other. Our general method of handling this question of the smaller minority groups would justify us in proposing that three members should be nominated to represent the Sikh groups, but in that case the Sikhs unlike the other communities, would have no elected member. This would on general grounds be an unsatisfactory conclusion, and specially so because the Sikhs have a high percentage of literacy; out of the 12,365 adult males 4,064 are literate. This factor entitles us to recommend that out of the three Sikh groups, two (1) Mirpur-Poonch and (2) West Kashmir should each elect one member. This third

constituency of Eastern Kashmir and Jammu minus Mirpur will be too large a constituency in wl1icll to arrange an election so we recommend a nominated Sikh member for that constituency.

The steps which we have considered in the preceding paragraphs have raised the proposed rural representation to 24 elected and 12 nominated members. In the hypothetical constitution which we first examined we had 12 rural to 4 urban members and the latter number also must now be raised, and for the same reasons. We propose, therefore, that there should be 10 urban elected members, 7 from Srinagar and 3 from Jammu, of whom the Muslim electorate should elect 1 member in Jammu and 5 in Srinagar and the Hindu electorate 2 in each city.

In order to simplify the process of election, Srinagar should be divided into single-member constituencies, the basis of the division being, according to our general principle, the existing municipal wards. For the Muslim seats wards Nos. 1 and 3 in the south can be combined as one constituency No. 1 carrying a comparatively light population. Similarly the outlying wards in the north, Nos. 6 and 8 should provide one seat. The qualified voters in ward No. 2 will be so predominantly Hindu that for the Muslim electorate this ward can be combined with No. 4. The densly populated wards 5 and 7 should each return a Muslim member. Of the two Hindu members one should be elected by wards 1, 2 & 3, the other by the remaining five municipal wards.

We have heard much evidence on behalf of the domiciled Hindus of Srinagar, a community which is of real importance to the State, though its numbers are small and it has few members who are State-subjects. It is obvious that these Hindus could not secure an elected seat, as they are completely outnumbered in the possible Hindu electorate, and they would not de qualified for inclusion in the State Councillors. We, therefore, propose that there should be one nominated seat in Srinagar for their representation.

Our full scheme would thus provide 34 elected and 13 nominated members to represent the cities and districts. To these we should add the 15 State Councillors, to whom we referred in pare 7 and whose inclusion we regard as an essential element in the constitution. The local facts which have led us to raise the number of representative members from 15 to 47 do not apply to the nomination of the most eminent men in the State, and we retain the original number sixteen. It is not for us to restrict His Highness' freedom of choice in summoning his Councillors by name, but we would respectfully urge, firstly that they should be chosen from those whose actual and historical position in the State is so eminent that they would naturally be members of a second Chamber, if such were constitute], secondly that they should not be officials, and thirdly that in order preserve the balance of the communities, no fewer than five should be Muslims. It would also be advantageous if one State Councillor were a Sikh who could help to harmonize the more purely local views of the representative Sikh members. Fourthly we recommend that in view of their historical position in the State, four of the State Councillors should be Rajputs and four should be Illaqadars or Jagirdars.

We propose that the State Councillors should remain members for more than one term of the Assembly, and that a Councillor nominated to fill a vacany should hold his seat for the next half term. This would secure some continuity in the advice which the Assembly could tender. It has a parallel in the British Municipal system. As we recommend later a three years term for the Assembly the State Councillors should be appointed for a term of 41 years.

We recommend that the Assembly should be completed by the addition of twelve official members of whom six would be Ministers holding their seats ex-officio. Their presence is unquestionably necessary in order to state to the Assembly the views of the government. It is similarly desirable to have in the Assembly Heads of Departments who have expert knowledge; the remaining six official seats would enable His Highness to make such nomination as might be required for presenting this expert official knowledge and we recommend that one of these six official seats should be for an official of Poonch, to be nominated by the Illaqadar with the approval of His Highness.

We can now conveniently tabulate the proposed composition of the Assembly.

Constituencies	Muslim	Hindu	Buddhist	Sikh

	Elected	Nominated	Elected	Nominated	Elected	Nominated	Elected	Nominated
Jammu City	1		2					
Jammu Wazarat	1		1	1				
Udhampur	1		1	1				
Chenani				1				
Reasi	1		1					
Kathua	1		1					
Mirpur, Hindu			1					
Mirpur, Kotli	1							
Bhimbar	1							
Poonch, Hindu				1				
Haveli Mendhar	1							
Bagh Sudhunti	1							
Mirpur Poonch Sikh								1
Srinagar City	5		2	1				
Tehsil Khas Pulwama	1							
Anantang	1							
Kulgam	1							
Kashmir South Muslim		1						
Badgam	1							
Handwara	1							
Baramulla	1							
Kashmir North Muslim		1						
Muzaffarabad	1	1						

Kashmir Hindu		1						
West Kashmir Sikh							1	
Ladakh		2			2			
Gilgit		1						
Total	21	6	10	5	2	2	2	

Total members with 16 State Councillors and 12 officials ...75

33 elected members (21 muslims, 10 Hindus, 2 Sikhs)

30 nominated members

Minimum number of Muslim members...32 excluding the 12 officials.

Maximum number of Hindu members. . .25

We do not recommend that there should be special representation either of the Rajputs or of the land-holders or of traders or of the depressed classes or of labour. The first two groups would have their representatives among the State Councillors; so too might trade, and we have considered the tradinginterests when giving weightage to the cities; and w e have already stated our views and made provision for the depressed classes. Neither these nor the labourers would normally be represented in the first stage of constitutional development. We have no evidence of any serious organic cation of labour as a separate class. We consider, however, that the provision of extra nominated seats in the Kashmir Muslim constituencies would give His Highness an opportunity of selecting one or two members who would be more directly interested in the welfare of the labouring classes, in the same way as the Jammu and Udhampur Hindu nominated seats can be used for the representation of the lower orders of the Hindus.

We may and add here a recommendation that in no case should a candidate who has been defeated in an election be nominated to a seat in the same term of the Assembly. This is a convention in the practice of British India, for obvious reasons.

We conclude this portion of the Report with certain recommendations about the assembly, though we do not consider it to be our province to discuss its powers; we have made our proposals as to its composition on the assumption that its powers will be on general lines similar to those recommended by Mr. Glancy.

We would desire that in accordance with the practice in British India in earlier days when the Councils were formed, the Prime Minister should be the President of the Assembly. But we recognize that to act throughout a session both as President, responsible for the procedure of Assembly, and as Leader of the House, responsible in addition to the Prime Minister's duties. We, therefore, recommend that His Highness should appoint another Minister, preferably the Judicial Minister, to preside over the Assembly. and be in permanent charge of the Assembly office. It may be ordered that in the unavoidable absence of the Minister particularly appointed as President, any other Minister may act as President. It is obvious that these duties will demand an officer with full experience in the transaction of official business, and that the election of an untrained non-official cannot yet be contemplated.

In the experimental stage we think that there should be a dissolution in the ordinary course after three years.

The terms of the nominated members, other than of the Ministers and State Councillors, should be the same as that of the elected members.

There are five general conditions which must govern any system of Franchise. Two are of minor practical importance and we only follow ordinary usage in saying that:

Persons of unsound mind cannot vote,

Persons may be disfranchised for corrupt practices at an election.

The other three general conditions are those of:

nationality,

sex, and

age.

There should be no question that every elector must be a State-subject. this is the essential bond of unity in an electorate which is so separated by natural conditions and by religion, and we might add that this is one point on which the majority of our witnesses are agreed. We do not propose that for the purpose of enfranchisement the existing law defining a State-subject should be changed. Mr. Glancy's remarks on this point exaggerate the issue and we do not understand his reference to "hereditary - State-subject" or to "domicile in the State for a thousand years." The present definition, if applied to the franchise, would admit persons who have acquired immovable property in the State and have ten years' continuous residence. It is our general principle that the new constitution must be evolutionary; it should rest on existing conditions in the State and not on a priori ideas or on blind imitation of the practice in other countries. If for general reasons, and after hearing the advice of the new assembly, His Highness the Maharaja Bahadur decides to alter the law that would automatically affect the franchise; but the franchise now must be based on the present definition, and only State-subject of the three classes as now defined should be qualified to vote or to be elected as members.

The same principle leads us to agree with Mr. Glancy that women in general should not be enfranchised. We have a representation from the local branch of the All-India Women's Conference, and some of our Hindu witnesses have favoured women's suffrage. But it is obvious that the majority of the population would not welcome this and we must add the practical consideration that the inclusion of women voters in any large number would increase the administrative difficulties of the first election. At the beginning the most that we can do is to admit women who have a sufficient educational qualification..

As regards age we follow the general practice that a voter must be 21 years old when the electoral roll is published. We note that this means a small reduction in the figures of adult males, which we have quoted from the census.

Only one witness has urged adult male suffrage, and it is not necessary for us to consider this question either as an immediate issue or as the goal for the future. Adult male suffrage would require at least 1,300 officials of standing to act as presiding officers at the election, besides more than 3,000 clerks. Besides being premature now, it is administratively impossible.

Just as many of the opinions expressed to us about the Assembly have been of no help because witnesses have assigned seats to the different communities by percentages, without considering what the constituencies actually should be, so the attempt to create an electorate on a fixed percentage of the population as well as on personal qualification has led our witnesses into logical and practical difficulties; one witness, regardless of finance, has proposed that there should be a special electoral census, in order that the Government may ascertain the exact figures of land revenue payment which would qualify precisely 10 per cent of the people, another witness takes the line 10 per cent, should be enfranchised in each district, and that the personal qualifications should be varied accordingly from district to district. We must repeat that 10 percent was an arbitrary figure taken by the statutory Commission as a rough guide in conditions which do not as yet apply to Jammu and Kashmir. The simple fact is that no uniform personal qualifications can give same numerical result all over the country. We must leave these arbitrary figures and base our scheme of qualification on reasoned grounds.

We may begin by admitting to the franchise all those whose position is already representative, and who therefore may justly represent their fellows at an election. These are the Zaildars, Safed-Poshes and Lumberdars, who in districts where there are many villages, are very numerous. There are also the

religious representatives, Imams, Mufties and Qazis, the Adhisthatas of temples, the Bhais and Granthis of Gurdwaras and ordained Ministers of the Christian Church.

A second group includes those whose prominence or responsibility are shown by the fact that they received titles in the State or in British India, or are receiving pensions of not less than Rs. 10 a month, or are retired or pensioned officers or N.C.Os of the regular military forces. To these we may add, without straining our principle the retired soldiers, who certainly hold a distinguished place among their fellows.

Our third group would include those whose education or subsequent attainments have clearly fitted them for a part in a modern constitutional system. We would enfranchise as such the Lawyers, Doctors, Hakims, Vaids and Schoolmasters, who are actually practicing in the State. To these we would add those who have at least passed through the Middle school or an equivalent educational test, as well as those who have had higher education.

Lastly there must be the principal mass of electors, who can voice the feelings of the ordinary citizen, but who must be expected to do with some degree of responsibility. For this purpose property is the only possible test, in this State as elsewhere, but we think it necessary to make the property test a low one, in order that the Government may be quite sure that at an election the ordinary people are really represented. We agree with Mr. Glancy in putting the basic figure for the payment of land revenue as low as Rs. 20, a lower figure than is in force in the Punjab, but, in order to secure an adequate urban electorate we prefer Rs. 600 as the value of immovable property other than land which should qualify a person to give a vote, instead of Mr. Glancy's figure of Rs. 1,000. These qualifications must be supplemented by a similar qualification for occupancy tenants, and by a slightly higher qualification for the holders of Ilaqas, Jagirs, Guzaras and revenue-free land. We add a grazing-fee qualification in order to enfranchise persons of settled habitation whose property is in livestock. We adopt in all these cases the Punjab rule which enables co-sharers to vote if the value of their share would, if partitioned, come within the prescribed limits. We have not delayed the submission of this report in order to complete or test the figures which we have been collecting of the number of voters which these property qualification would produce: but we are satisfied that the number will not be so great as to make the conduct of the elections too difficult for a limited official staff, whereas lower rates would certainly lead to practical difficulties in some parts of the State. Our scheme would enfranchise more than 10Oo of the adult male population, and would give to the small revenue payers and the small house holders a great and often a decisive influence on the election. As there can be no doubt that these men are not distinguishable in feeling from the mass of the people, our object would be attained; our electorate would comprise all State-subjects who had raised themselves to a responsible position, and all who were educate, and also a large number of voters who would both be completely in touch with the masses and yet have the responsibility induced by the possession of their small property.

We have, in conclusion, to express our views as to the qualification for candidates for election. The object of the Election system being to secure the real representation of local opinion, no one should be entitled to be a candidate for a constituency in which he is not resident and registered as an elector but for this purpose registration in any part of a city should qualify an elector The object of convening the Assembly being to -obtain responsible assistance in legislation, we are justified in raising the age of candidates to 25, agreeing in this with Mr. Glancy and many of our witnesses. Lastly we recommend, in agreement with Mr. Glancy, that every candidate must be able to read and write the Urdu language, which will be the Language in which the Assembly will conduct its business.

As a summary of this part of our recommendations we append a draft of the relevent electoral rules, preparing, on established models, rules to govern the detailed procedure of elections, which it is not necessary for us to discuss in the Report.

DRAFT ELECTORAL RULES

Every person shall be entitled to be registered as an elector on the electoral roll of a constituency who is not subject to any of the following disqualifications, namely:

is not a State-subject of any class, as defined in notification I - L/1984, dated Jammu, 18th April 1927; or

has not attained the age of 21 years on the first day of the month on which the roll is published; or

has been adjudged by a competent court to be of unsound mind; or

if female, has not obtained the Middle school certificate or any other certificate mentioned in rule 4(7) below or a certificate of having passed some higher examination; and who has the qualifications prescribed for an elector of that constituency in rules 2,3 and 4.

A person shall be qualified as an elector,

in a Muslim constituency, who a Muslim,

in a Sikh constituency, who is a Sikh, and

in any other constituency, who is neither a Muslim nor a Sikh.

A person shall be qualified as an elector of that constituency alone in which he or she ordinarily resides or carries on business.

Provided that no person shall be entitled to have his name entered on the roll of more than one constituency but he can choose the constituency on whose roll his name may be entered.

A person shall be qualified as an elector who has any one of the following qualifications:

is a Zaildar, or Safed-Posh, or Lumberdar, or

is an Imam of a mosque, or Mufti or Qazi, or an Adhisthata of a temple, or a Bhai or Granthi of a Gurdwara, or an ordained Minister of the Christian Church, who has been acting as such for a period of not less than six months prior to the preparation of the electoral rolls, or

is a recognized title-holder, or

is a retired or pensioned officer, non-commissioned officer or soldier of His Highness regular forces, pro that he has not been discharged therefrom with vided ignominy, or

is a pensioner who receives a pension of not less than Rs. 10 a month from treasury in this State or any other, or

is a Doctor, or Hakim or Vaid, or Lawyer, or Schoolmaster actually practising his profession within the State, or tenancy is divisible by 20 or the value of immovable property is divisible by 600. The co-sharer shall appoint by name the persons so entitled to vote as electors.

For the purpose of these rules a person shall be deemed to have owned property or to have paid fees for any period during which the property was owned or the fees paid by any person through whom he derives lisle by inheritance.

(1) An electoral roll shall be prepared for every contituency on which shall be entered the names of all persons appearing to be entitled to be registered as electors for that constituency. It shall be published in the constituency together with a notice specifying the manner in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or any person whose name is on the roil and who objects to the inclusion of his own name or of the name of any other person on the roll, may prefer a claim or objection to the Revising Authority.(2) The orders made by the Revising Authority shall be final. and the electoral roll shall be amended in accordance therewith and shall, as so amended, be republished in such manner as the Government may prescribe. No person shall vote at an election if on the date on which the poll is taken he is undergoing a sentence of imprisonment or if he has been bound over to be of good behavour and the period of the bond has not yet expired.

has obtained the Middle school cerficate, or a certificate of having passed the Budhiman, Rattan, Adhib, Munshi, Moulvi, or Prajna examination or a certificate of having passed some higher examination, or

is the owner of land assessed to land revenue of not less than Rs. 20 per annum, or

is an Ilaqadar, or

(a) is a Jagirdar, Muafidar, or Guzarkhar holding an assignment of not less than Rs. 20 per annum, or

is a tenant with right of occupancy paying rent of not less than Rs. 20 per annum, or

is the owner of immovable property, other than land. within the State, of the value of not less than Rs. 600, or

pays grazing-fees to the Government of not less than Rs. 20 per annum and is not a Bakarwal.

Where two or more persons are co-sharers in land assessed to land revenue, or in an assignment of land-revenue, or in other immovable property, or in a tenancy, every person shall be qualified as an elector who would be so qualified it his share in such land, property, assignment or tenancy were held separately. The share of any such person who is under 21 years of age shall be deemed to be the share of his father, or if his father is dead his eldest brother provided that his father or eldest brother as the case may be. is a co-sharer with him in the property.

If on division, none of the persons would be entitled to vote, any one or two or such number of them shall be entitled to vote as the number of times the total revenue or assignment of land-revenue or rent of

A person shall be eligible for election as a member of the Assembly for a constituency if he is;

over 25 years of age, and

can read and write the Urdu language, and

is registered as an elector for that constituency, or if the constituency is an urban constituency is registered as an elector in the city of which the constituency forms a part, and

has ordinarily resided or carried on business in the constituency or city for the twelve months proceeding the first day of the month on which the roll is published.

Note:- For the puspose of this rule, a person may be presumed to reside in a constituency if he owns a family dwelling house or a share in family-dwelling house in the constituency, and that house has not during the twelve months been let on rent either in whole or in part.

A person against whom a conviction by a criminal court for an offense punishable with a sentence of imprisonment for a period of more than six months is subsiting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence.

A person shall not be eligible for election if he is an undischarged insolvent, or being a discharged insolvement has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

The name of any person who has been found guilty of a corrupt practice, under any rules in force regarding elections, shall be removed from the electoral roll, and shall not be registered on an electoral roll for a period of five years from the date of the finding, and such person shall not be eligible for election to the Assembly for such period.

(Sd) Barjor Dalal President
(„) Kartar Singh Member
(„) Abdul Qayoom Member
(„) Ivo Elliott Member

Jammu:
30th December, 1933

53 Constitution Act, 1934

Legal Document No 52

Whereas it is my declared intention to provide for the association of my subjects in the matter of legislation and administration of the State, I hereby promulgate the following Regulations:

This Regulation may be styled the Jammu and Kashmir Regulation No. 1 of 1991 and it shall come into force on 7th Baisakh 1991.

In this Regulation unless there is something repugnant in the subject or context:

"His Highness" means His Highness the Maharaja Bahadur of Jammu and Kashmir.

"State" means the State of Jammu and Kashmir.

"Council" means the Council of Ministers of Jammu and Kashmir hereinafter referred to.

"Assembly" means the Legislative Assembly of the State constituted under this Regulation.

"Official" and "Non-Official" means respectively a person who is or who is not in the Civil or Military Service of the State provided that rules under this Regulation may provide for the holders of such offices or any of them as may be specified in the rules not being treated for purposes of this Regulation as officials.

All powers, legislative, executive and judicial in relation to the State and its Government are hereby declared to be and to have been always inherent in and possessed and retained by His Highness the Maharaja of Jammu and Kashmir and nothing contained in this Regulation shall affect or be deemed to have affected the right and prerogative of His Highness to make and pass Regulations, Proclamations and Ordinances by virtue of his inherent authority.

The Government of the State shall be conducted in the name of His Highness and all powers and authority under this Regulation shall be exercised by and in the name of His Highness.

The Council of Ministers of the State shall comprise the Prime Minister for the time being and such other Ministers of the State as His Highness may appoint. The Prime Minister, who shall be the President of the Council and the other Ministers shall hold office during His Highness' pleasure.

Subject always to the provisions of Section 3 and the exercise in his discretion of the powers and authority inherent as aforesaid in His Highness and subject also to such rules of business and allocation of portfolios and such other directions as to consolations with or reports and confirmation by His Highness on specified matters His Highness may give from time to time by general or special orders in that behalf, the superintendence, direction and control of the Civil Administration and Government of the State shall be vested in the Council.

The following subjects shall be deemed to be reserved from this Regulation and it shall not be lawful for the Council or the Assembly to consider, deal with or enact any measure relating to or affecting:

His Highness or any Member of the Royal Family or the management of their Household:

relations, treaties, conventions or agreements bet\veen the State and His Majesty the King Emperor of India or the Government of India or with Foreign poNvers or the Government of any State in India now subsisting or in force or hereafter to be established or made;

matters concerning the Gilgit and Ladakh Frontiers;

rights specifically granted to Ilaqadars or Jagirdars by their Sanads;

the organization, discipline and control of the State Army;

the State Departments now under the charge of the Minister-in-Waiting on His Highness and specified in the Schedule hereto (Schedule 1)

the Dharmarth Department; and

the provisions of this Regulation and the Rules thereunder and their repeal or modification.

The Council, with the previous consent of His Highness and subject to the provisions of Section 6, may make rules for the conduct of executive business and may, in default of any directions given by His Highness provide that the authority of the Council may be delegated to a Minister in respect of any subject or class of subjects.

All rules and orders issued prior to the enactment of this Regulation shall remain in force excepting in so far as they are amended or repealed by this Regulation.

The Legislature of the State shall consist of:

the Council; and

the Assembly; and subject to the provisions of Section 7, no legislative measure shall be deemed to have been passed unless it has been passed by the Council of the Assembly under the provisions hereinafter set out and has received the assent of His Highness.

The Council may provide by Regulation for any matter concerning the Public Department or the Public Revenue of the State including the imposition of any charge thereon or the maintenance, alteration or imposition of any tax or duty.

Notwithstanding anything contained in this Regulation the Council may in cases of emergency or where immediate legislation is required in any matter affecting the peace and good Government of the State. submit to His Highness an Ordinance and such Ordinance or being assented to by His Highness shall have the force of law for a period not exceeding six months from the date of promulgation.

Subject to the provisions herein contained the Assembly shall have power to make Regulations for all persons, for all Courts and for all places and things within the State.

The Assembly shall consist of Members nominated or elected under provisions of this Regulation and of the Jammu and Kashmir Assembly Electoral Regulations, issued under his Highness Command by endorsement No. P. B. 157 of 5th March 1934. The total number of non-elected Members shall be 42 and shall include the Ministers for the time being and officials nominated by virtue of their office and 16 State Councillors summoned by name by His Highness for the constituencies and communities specified in the attached schedule (Schedule II) The number of Officials nominated by virtue of their office shall not exceed 12 including the Ministers. The number of elected Members shall be 33 and they shall be elected for the constituencies and from the communities specified in the Jammu and Kashmir Assembly Electoral Regulations.

The Council may make rules for the following purposes:

as to the term of office of nominated Members of the Assembly and the manner of filling causal vacancies amongst them;

as to the conditions under which and the manner in which persons may be nominated as Members of the Assembly;

as to the qualifications of electors, the constitution of constituencies and the method of election for the Assembly and any matter incidental or ancillary there to;

as to the qualification for being elected or being nominated as Members of the Assembly;

as to the final decision of doubts or disputes as to the validity of an election; and

as to the manner in which such rules should be carried into effect.

The Council shall provide by rules under this Regulation for regulating the course of business and the preservation of order in the Assembly; for number of Members required to constitute a quorum and for prohibiting or regulating the asking of questions on and the discussion of any subjects specified in the rules.

The President of the Assembly shall be appointed by His Highness for such term and on such salary as he may fix and he may remove the President from office and fill casual vacancies in that office from time to time. The President's place during temporary absences shall be taken by such persons as His Highness may direct by general or special order in that behalf.

Every Assembly shall continue for three years from its first meeting provided that:

the Assembly may sooner be dissolved by His Highness;

such period may be extended by His Highness if in special circumstances he so deems fit: and

after the dissolution His Highness shall appoint a date not more than six months after the date of the dissolution for the next Session of the Assembly.

There shall be two Sessions of the Assembly in the year as far as possible in the months of October at Srinagar and in March at Jammu and His Highness may also appoint such other times and places for holding an ordinary Or special Session as he thinks fit.

His Highness may from time to time prorogue the Sessions of the Assembly.

Any Session of the Assembly may be adjourned by the person presiding.

All questions in the Assembly shall be determined by a majority of votes of the Members present other than the presiding Members who shall have and exercise a casting vote in case of an equality of vote.

The powers of the Council or the Assembly may be exercised notwithstanding any vacancy among the Ministers or the Assembly.

An official shall not be qualified to be elected as a Member of the Assembly or to be nominated for any of the seats specified in Schedule II and if an elected Member or a Member nominated for one of such seats accepts office, his seat shall become vacant.

The seat of any Member of the Assembly shall become vacant on his being sentenced for an o fence punishable with imprisonment for a term of six months or more or on his being interned or externed under the orders of a Magistrate or the Council of His Highness.

It shall not be lawful for the Assembly to make, repeal or alter any Regulation referred to in Section 12.

It shall not be lawful at any meeting of the Assembly to consider or enact any measure imposing any disability on any community as such.

It shall not be lawful, without the previous sanction of His Highness and without the consent in writing of not less than two-thirds of the Members of the Assembly from the community affected, to introduce, consider or enact any measure affecting the religious rights, usages, endowments or personal law of any community.

When any bill has been introduced or is proposed to be introduced or any amendment to bill is moved or proposed to be moved or any resolution is moved or proposed to be moved or any question is proposed to be asked, His Highness may declare that the bill or any clause of it or amendment or the resolution or question affects the safety or tranquility of the State or any part thereof and may direct that no proceedings shall be taken by the Assembly in relation to the bill or any clause of it or amendment or resolution or question and effect shall be given to such direction.

No measure shall be deemed to have been passed by the Assembly until and unless His Highness has signified has assent thereto.

Where the Assembly refuses leave to introduce or fails to pass in a form recommended by the Council any Regulation, His Highness may declare that the Regulation is essential for the good Government safety or tranquility of the State and such measure shall, on the signification of His Highness' assent become a Regulation as if it has been passed by the Assembly.

Subject and without prejudice to the provisions herein contained, His Highness may, where a measure has been passed by the Assembly, return the same for reconsideration by the Assembly.

The President shall refuse leave to move a resolution or to ask a question which, in his opinion, affects any matter reserved under the provisions of this Regulation, or which affects the religious rights, usages, endowments or personal law of any community and is not moved or asked by a Member of that community.

Standing Orders may be made and altered by the Assembly providing for the conduct of business and the procedure to be followed in the Assembly. Any Standing Order which is repugnant to the provisions of this Regulation or to any rules made thereunder shall, to the extent of that repugnancy but not otherwise, be void.

Subject to the rules and Standing Orders of the Assembly, there shall be freedom of speech in the Assembly and no person shall be liable to any proceedings in any Court of Law by reason of his speech or vote in the Assembly or by reason of anything contained in any official report of the Assembly.

The Council shall cause a copy of the detailed statement of the estimated annual Revenue and Expenditure of the State and of the Ilaqas exercising Criminal and Civil Juridisction to be laid on the table of the Assembly first day of the Session to be held in each year in the month of October or any of the subsequent months if a meeting be not held in October. The President shall provide for the meeting of the Assembly on not fewer than seven days for the consideration of the statement after a week from the commencement of the said Session of the Assembly. During the time so provided and subject to the - provisions hereinafter contained and to any rules or Standing Orders, any Member of the Assembly may ask a question or move a resolution regarding any appropriation of revenue or moneys proposed in the statements or regarding the form in which. the statement is laid on the table.

If such a resolution is supported by a majority of votes, the President shall, before the Budget is passed, declare what action, if any, the Council will take on the resolution.

Before any new tax or duty is imposed or the rate of any existing tax or duty is altered by any Ordinance, Regulation or rule under this Regulation, the Council shall cause a copy of such Regulation, Ordinance or rule to be supplied to each Member of the Assembly and the President shall allot a day or days for the consideration of such proposals in the Assembly and any Member may then move any resolution on the proposals or ask any question regarding them and such tax or duty shall not be imposed or altered until the Council has taken into consideration any resolution regarding it which may have been passed by a majority of votes in the Assembly.

The following matters shall not open for discussion and no resolution may be moved or question asked in respect of these at the time when the said statement is under consideration:

expenditure on matters reserved from the cognizance of the Assembly under Section 7;

expenditure which is obligatory under any law;

pensions and gratuities granted by His Highness or with his sanction or under the rules sanctioned by His Highness;

interest on loans and sinking fund charges; and

expenditure which may be classed by His Highness or the Council as political.

If any question arises whether any proposed appropriation of revenue or moneys does not relate to any matter not liable to be voted upon by the Assembly, the decision of the President shall be final.

No proposal shall be made or resolution moved for the appropriation of any revenue or moneys for any purpose excepting by and on the recommendation of the Council.

It shall not be lawful for any Member to introduce in the Assembly, without the previous sanction of the Council. any measure affecting the public revenues of the State or imposing any charge on such revenues.

Where any Ordinance has been passed under Section 12 of this Regulation, the Council shall cause a copy of it to be delivered to such Member of the Assembly.

If any dispute arises as to the interpretation or the carrying out of any of the provisions of this Regulation or the rules made thereunder, the decision of the Council, subject to the provisions of Section 3, shall be final.

Communication by His Highness to the Assembly may be made (a) in person, (b) by message sent through the PrimeMinister or other Minister, or (c) by the President or other person presiding under the Provisions of Section 17.

Every person who is elected or nominated to be a Member of the Assembly shall before taking his seat make at a meeting of the Assembly, an oath of his allegiance to His Highness in the following form, namely:

I have been elected/nominated Member of this Assembly do solemnly swear that I will be faithful and bear true allegiance to His Highness Raj Rajeshwer Maharajadhiraj Shri Maharaja Harisingh Ji Bahadur, Indar Mahindar Sipar-i-Saltanat-i-Inglishia, G.C.S.I., G.C.I.E., K.C.V.O., of Jammu and Kashmir his heirs and successors and that I will faithfully discharge the duty upon which I am about to enter.

Every person who is appointed to be Member of the Council shall before entering on his office make the oath of allegiance in the same form.

SCHEDULE I

(See Section 7 (f))

The State departments under the Minister-in-Waiting and now styled as:

Ceremonial, Toshakhana and State Garage.

Place Guards and State Stables.

Palaces.

Reception.

Shikarkhana.

Provided that His Highness may at any time re-name or re-classify and of the items now included in the departments so styled.

SCHEDULE II

(See Section 14)

Constituencies for which members shall be nominated.

No. of members	*Constituency*	*Community*
I.To be nominated by His Highness.		
2	Ladakh Wazarat	Buddhist
1	Skardu Tehsil	Muslim
1	Kargil Tehsil	Muslim
1	Gilgit Wazarat	Muslim
1	North Kashmir Wazarat	Muslim
1	South Kashmir Wazarat	Muslim
1	Muzaffarabad Wazarat	Muslim
1	Jammu Wazarat	Hindu (Megh)
1	Udhampur Wazarat	Hindu(Megh)
1	Srinagar City	Hindu other than Kashmiri Pandit
1	Wazarats Jammu,	Sikh.

	Udhampur, Reasi, Kathua, Kashmir South and Sri Partap singhpura Tehsil.	
II. To be nominated by His Highness on the recommendation of the Ilaqadar of Poonch.		
1.	Ilaqa Poonch	Hindu
III. To be nominated by His Highness on the recommendation of Ilaqadar of Chenani.		
1.	Ilaqa Chenani	Hindu

54 Jammu and Kashmir Praja Sabha Election Rules

Legal Document No 53

(Extract)

QUALIFICATIONS OF ELECTORATES

I. No person shall be entitled to be registered as an elector on the Electoral Roll of a general or special constituency who:

is not a State-subject to any class as defined in Noti-fication I-L/1984, dated Jammu the 18th April 1927; or

has not attained the age of 21 years on the first day of Baisakh of the year in which the general elections are held; or

has been adjudged by a competent court to be of unsound mind; or

if a female, has not passed the Third Middle Examination or any other examination mentioned in Rule 11 t7).

II. Every person who is not subject to any of the disqualifications mentioned in rule 1 shall be entitled to be registered as an elector in the Electoral Roll of a general or special constituency if he resides or carries on business within that constituency:

(i) In the case of a general constituency:

is a Zaildar, or Safed-Posh, or Lambardar, and is not under suspension, or

is an Imam of a Mosque or Mufti or Qazi or an Adhishthata of a temple, or a Bhai or Granthi of a Gurdwara, or an ordained Minister of the Christian Church who has been acting as such for a period of not less than six months prior to first Baisakh of the year in which the general elections are held, or

is a recognised title-holder, or

is a retired or pensioned Officer, non-commissioned Officer or soldier or His Majesty's or His Highness' regular forces provided that he has not been discharged therefrom with ignominy.

Explanations

The term "regular forces" used in clause 4 of the foregoing Rule shall include the subjects of Jammu and Kashmir State serving as commissioned officers and Indians of other ranks of the Royal Indian Army Service Corps and also the commissioned officers and Indian other ranks of the Animal and Mechanical Transport Sections of the Jammu and Kashmir Army, or

is a pensioner who receives a pension of not less than Rs. 10 a month from a Treasury in the State, or any other treasury, or

is a Doctor or Hakim or Vaid, or Lawyer, or School master actually practicing his profession within the State, or

has passed the Third Middle Examinaton, or passed the Budhiman, Rattan, Adib, Munshi, Moulvi, or Prajna examination, or some higher examination, or

pays a sum of not less than Rs. 20 per annum under one or more of the following heads:

land revenue on account of land owned by him;

rent on account on land held- by him as a tenant with a right of occupancy;

grazing fees payable to the Government, or is a Jagirdar, Muafidar or Guzarakhar holding an assignment of not less than Rs. 20 per annum, or

is the owner of immovable property, other than agricultural land, within the State, or of a boat or boats of the value of not less than Rs. 600, or

pays income-tax, or has throughout the twelve months preceding the date of the notification occupied as tenant in the constituency immovable property, not being land assessed to land revenue, of an annual rental value of not less than Rs. 60.

Explanations

If any land or immovable property has been in possession of a mortgage for the whole of the year before the preparation of the Electoral Roll, such mortgagee and not the real owner shall be deemed to be the owner for the purpose of sub-rules 8(a) and (10).

Provided that no person shall be qualified as an elector:

in a Muslim constituency if he is not a Muslim;

in a Sikh constituency if he is not a Sikh

in a Hindu constituency if he is either a Muslim or a Sikh.

(ii) in the case of a special constituency:

In case of the Jammu and Kashmir Tazimi Sardars constituencies, is a Tazimi Sardas.

In case of the Jammu and Kashmir Jagirdar, Muafidar or Mukarridar constituencies, is a Jagirdar, Muafidar or Mukarridar holding a Jagir, Muafi or Mukarri from the State of not less than Rs. 500 per annum.

In case of the Jammu and Kashmir Land-holders constituencies, is a holder of any land assessed to. land revenue of not less than Rs.250 per annum.

In case of the Jammu and Kashmir pensioners Constituency is a pensioner receiving Rs. 100 or more as pension.

Provided that no person shall be entitled to have his name entered on the roll of more than one special constituency of the same class but he can choose the constituency on whose roll his name may be entered.

Explanations

Where a Jagir, Mukarrari, Muafi or land is held Jointly by members of a joint family, the family shall be adopted as the unit or deciding whether any qualification exists and if it exists, the person qualified shall be, in the case of a joint Hindu: family, the Manager thereof, and in the case of any other joint family the member thereof authorised in that behalf by the family.

For the purpose of this rule, a person may be presumed to reside in a consitituency if he owns. a family dwelling-house in the constituency and that house has not, during the twelve months preceding the date of the notification been let on rent.

III. 1. Where two or more persons are co-sharers in land assessed to land revenue, or in an assignment of land revenue, or in other immovable property, or in a tenancy, or in a Jagir, Mukarrari or Muafi every person shall be qualified as an elector who would be so qualified if his share in such land,. property, assignment or tenancy were held separ-tely. The share of any such person who is under 21 years of age shall be deemed to be the shareof his father, or if his father is dead, of his eldest brother, provided that his father or eldest brother, as the case may be, is a co-sharer with him in the property:

of times, the total revenue, assignment of land revenue or rent of tenancy is divisible by 20 or in the case of immovable property other than agricultural land as the number of time, the value of such property is divisible by 600;

in the case of special constituencies, the number of times the total of the amount of Jagir revenue or assignment of revenue, as the case may be is divisible by 500 in the case of constituencies of the Jammu and Kashmir Jagirdars, Muafidars and Mukarraridars or by 250 in the case of constituencies of Jammu and Kashmir land-holders. The co-sharers shall appoint by name the persons so entitled to vote as electors.

IV. For the purposes of these rules a person shall be deemed to have owned property or to have paid fees for any period during which the property was owned or the fees paid by any person trough whom he derives title by inheritance.

V. No person shall be entitled to vote at any election if on the date on which the poll is taken he is undergoing a sentence of imprisonment, or if he has been bound over to be of good behaviour and the period of the bond has not yet expired, or if he is disqualified for membership of the Praja Sabha.

QUALIFICATIONS OF CANDIDATES

VI. A person shall be eligible for election as member of the Praja Sabha for a general or special constituency if he is not subject to any of the disqualifications contained in section 28 of the Act, and

can read and write the Urdu language in any script, and is registered as an elector for that constituency, or, in, the case of a general constituency, for any other constituency in the Province, and in the case of a Muslim or Sikh constituency, he is himself a Muslim or Sikh, as the case may be, and in the case of a Hindu constituency, he is not a Muslim or Sikh.

Explanations

For the purposes of this rule a Province shall mean either the Kashmir Province or the Jammu Province (inclusive of the Jagirs or Poonch and Chenani) as the case may be.

55 Order to Convene the first Session of the Praja Sabha No 57

September 26, 1934

Legal Document No 54

Under Rule 4 of the Jammu and Kashmir Legislative Assembly Rules of Business and Procedure, we hereby appoint Wednesday the 17th October 1934 (Ist of Katik 1991) as the day, and the Rajgarh Palace, Srinagar, as the place, for holding the Ist session of the first Assembly of Jammu and Kashmir.

The time of the meeting will be notified later.

Sd/- (Hari Singh)
Maharaja.

56 Vernacular names for the Ministers order No. 99

October 5, 1934

Legal Document No 55

In future the bodies and persons mentioned below shall be designated as follows:

English	Vernacular
Executive Council	Amatya Mandal
Prime Minister	Pradhan Amatya
Ministers	Amatya

These names when used by persons will be placed after and not before the name of the individuals using them.

Sd/- (Hari Singh)
Maharaja.

57 Appointment of Ministers to Praja Sabha Order No. 132

October 13, 1934

Legal Document No 56

In addition to the President of the Assembly I hereby appoint the following Ministers to be members of the State Assembly:

Colonel E.J.D. Colvin, C.I.E., Prime Minister

Major General Nawab Khusru Jung Bahadur, Minister-in-Waiting

Mr. Wajahat Hussain, I.C.S., Home Minister

Mr. V.N. Mehta, I.C.S., Revenue Minister Rao Bahadur Thakur Kartar Singh Ji, Finance Minister

Sd/- (Hari Singh)
Maharaja.

58 Appointment of Official Members to Praja Sabha Order No. 133

October 13, 1934

Legal Document No 57

In addition to the Ministers I hereby appoint the following to be official members of the Assembly until further orders:

K.B. Sheikh Abdul Qayum, B.A., L.L.B., Judge of the High Court

Captain, Kanwar Hira Singh, Political Secretary

Lala Haveli Ram, General Secretary

Rai Bahadur, Pandit Anant Ram, Director Land Records

Mr. P.D. Pande, Accountant General

Khan Sahib, Mohammed Afzal Khan, Governor of Kashmir

Sd/- (Hari Singh)
Maharaja

59 Inaugural Address of the Maharaja to the Praja Sabha

1934

Legal Document No 58

We recently expressed our wish and pleasure that means be designed whereby our people may be more closely associated in our Councils; and in pursuance of our commands thus declared, those persons appointed by us to give practical shape to our wishes have submitted their recommendations which have been accepted by us.

The assemblage here present this day is the outcome of their labours to give outward form to our behests. It is the first of its kind in recent times; but, of old, the duties which you will have to perform, were duties which were always shouldered, and loyally discharged, by the `'Praja" ever since the institution of monarchy came into being in this ancient land of India. To acquaint themselves with the needs of their people the kings of old have caused to be performed, and maintained, bodies from village Panchayats upto assemblies of this nature, composed of the representatives of the various interests in their kingdoms, our own records bear witness to this.

For our part we declare that Divine Provinence having laid upon us the sacred duty to care equally for all those committed to our guardianship, we can recognize no difference between one person and another or between one class and another. They are all our beloved children, whatever their persuasion or creed, and we desire to protect, foster, guide, and advance them by every means in our power.

Out of the great love and affection we bear our beloved subjects, we have called you to do your part in working for the well being of this State. We have appointed your task and indicated the lines of the service you can render to yourselves and to your Ruler whose ordained duty it is to safeguard and promote your best interests. We desire you to enter upon the discharge of your responsibilities in such, a way that your behaviour may be an example to others and your achievements at once a model for them to emulate and a monument to your own earnestness end your loyalty to the State that you serve.

No one here today can fail to realize that both in theory and practice, the existence of a stable society and a peaceful community involves, and presupposes, a head, whose sway must be ungudgingly accepted, and whose behests must be loyally carried out, if the harmony and orderly progress of the community is to be achieved. In recent times. certain nations have departed from this, and the world has witnessed the sorry spectacle of chaos and anarchy. The fate of these nations should provide us with an object lesson. Those who have chosen precipitately to break from their ancient moorings have not yet found the haven of peace, they are still floundering in stormy waters. Peace and harmony are the essential conditions of progress and prosperity, and all can see that the world of the present day, after experiencing the storm and stress of unsettlement, is once again discovering the axiom that peaceful progress, even if slow, is in the long run the best indeed, the only, way.

Beware of impassioned utterances so much in vogue today. They invariably formulate unbalanced and unpractical ideals that are as much divorced from decisive factors and stern realities as they are foreign to the genious of our race. Cultivate sobriety of thought and expression, shunning all that is disruptive, and devote all your energies to creative and constructive work which alone can help to ameliorate the lot, and conduce to the happiness of those whose spokesmen you have undertaken to be.

With these words of counsel and admonition by which we hope to plant the feet of our beloved subjects on the path of solid progress and achievement, we hereby declare this Praja Sabha (State Assembly) duly and well inaugurated and opened.

May the Dispenser of all Bounties in His infinite mercy and wisdom bless your labours, and may those labours, conducted in perfect harmony, redound to the credit of our subjects whose first chosen representatives you are, and to the glory of our unique heritage and of the body politic.

60 Resolution of the Working Committee of the Indian National Congress

29 July to 1 August, 1935

Legal Document No 59

Although the policy of the Congress regarding the State in India has been defined in its resolutions, a persistent effort is being made by or on behalf of the people of the States to get a fuller declaration of the Congress policy. The Working Committee therefore issues the following statement concerning the policy of the Congress with regard to the Princes and the people of the State:

The Indian National Congress recognises that the people in the Indian States have an inherent right to Swaraj no less than the people of British India. It has accordingly declared itself in favour of establishment of representative responsible government in the States and has in that behalf not only appealed to the Princes to establish such responsible government in their States and to guarantee fundamental rights of citizenship, like freedom of person, speech, association, of the press, to their people but has also pledged to the States people its sympathy and support in their legitimate and peaceful struggle for the attainment of full responsible government. By that declaration and by that pledge the Congress stands. The Congress feels that even in their own interests the Princes will be well advised to establish at the earliest possible moment full responsible government with their States carrying a guarantee of full rights of citizenship to their people.

It should be understood, however, that the responsibility and the burden of carrying on the struggle within the States must necessarily fall on the States people themselves. The Congress can exercise moral and friendly influence upon the States and this it is bound to do wherever possible. The Congress has no other power under existing circumstances although the people of India whether under the British, the Princes or any other power are geographically and historically one and indivisible. in the heat of controversy the limitation of the Congress is often forgotten. Indeed any other policy will defeat the common purpose.

With regard to the impending constitutional changes it has been suggested that the Congress should insist upon certain amendments of that portion of the Government of India Bill which deals with the relation of the Indian States to the Indian Federation. The Congress has more than once categorically rejected the entire scheme of constitutional reforms on the broad ground of its not being an expression of the will of the people of India and has insisted on a Constitution to be framed by a Constituent Assembly. It may not now ask for an amendment of the scheme in any particular part. To do so would amount to a reversal of the Congress policy.

At the same time it is hardly necessary to assure the people of the State that the Congress will never be guilty of sacrificing their interests in order to buy the support the Princes. From its inception the Congress has stood unequivocally for the rights of the masses of India as against any vested rights in conflict with their true interests.

61 Presidential Address of Sheikh Mohamad Abdullah, Muslim Conference

March 26, 1938

Legal Document No 60

(Extract)

Like us the large majority of Hindus and Sikhs in the State have immensely suffered at the hands of the irresponsible government. They are also steeped in deep ignorance, have to pay large taxes and are in debt and starving. Establishment of responsible government is as much necessity for them as for us. Sooner or later these people are bound to join our ranks. No amount of propaganda can keep them away from us.

The main problem therefore before us is to organise joint action and a united front against the forces that stand in our way in the achievement of our goal. This will require re-christening our organization as a non-communal political body and introducing certain amendments in its constitution and its rules.

I reiterate today what I have said so often. Firstly, we must end communalism by ceasing to think in terms of Muslims and non-muslims when discussing our political problems. Secondly there must be universal suffrage on the basis of joint electorate, without these two democracy is lifeless.

You complain that the Hindus belonging to the vested interests are reactionary and stand in the way of our progress.

But have we not had the same experience in the case of capitalist Muslim also? It is significant as well as hopeful that in spite of many difficulties in their way some non-muslims have cooperated with us though their number is very small. Their sincerity and moral courage make us feel their strength. We must, therefore, open our doors to all such Hindus and Sikhs, who like ourselves believe in the freedom of their country from the shackles of an irresponsible rule.

62 Resolution of the Working Committee Muslim Conference

June 28, 1938

Legal Document No 61

(Extract)

Whereas in the opinion of the working Committee the time has now come when all the progressive forces in the country should be rallied under one barner to fight for the achievement of responsible government, the Working Committee recommends to the General Council that in the forthcoming session of the Conference the name and constitution of the organisation be so altered and amended that all such people who desire to participate in the political struggle may easily become members of the Conference irrespective of their caste, creed or religion.

63 National Demand

1938

Legal Document No 62

As is now well known there is a nation-wide movement afoot among the people of Jammu and Kashmir State, to bring about a complete change in the social and political outlook of the people. This Movement is not confined to any particular community or section of the public but all classes of people have begun participating in it with the fullest consciousness of the issues it involves. But we do make it perfectly clear at the very outset that our loyalty to His Highness' person and throne is unswerving and needs no reiteration.

The ultimate political goal of this movement is the achievement of the complete responsible government under the aegis of His Highness the Maharaja Bahadur. But as sponsors of this national movement, we feel that it is our bounder duty to acquaint all our countrymen as also others who are interested in it of the immediate objective we have in view.

Our Movement is essentially a movement of peace and good-will. Immediately, it aims at securing the elementary -and basic rights of citizenship. It shall certainly try to bring about such a state of affairs in this country as would make it possible for even the humblest subject of His Highness to contribute to the making of his own destinies. Our demands are modest, but they have the force of reason and justice behind them. Not that we are not conscious of our limitations; not that we are not fully aware of the fact that the Government knows its mind and has resources as its disposal to enforce its w ill. But in the soul-stirring words of Pandit Moti Lal Nehru: "However much we may be enfeebled in body, our souls have never been nor will ever be killed." Our Movement has a gigantic urge behind it. It is the urge of hunger and starvation which propels it onwards in most adverse circumstances.

The ever-growing menace of unemployment amongst our educated young men and also among the illiterate masses in the country, the incidence of numerous taxes, the burden of exorbitant land-revenue, the appalling waste of human life due to want of adequate modern medical assistance, the miserable plight of uncared-for thousands of labourers outside the state boundaries and in face of all this the patronage that is being extended by the Government in the shape of subsidies end other amenities to outside capitalists as also the top-heavy administration that daily becomes heavier, point to only one direction that the present conditions can never be better as long as a change is not made in the basic principles that are underlying the present system of Government.

Our cause is both righteous, reasonable and just. We want to be the makers of our own destinies and we want to shape the ends of things according to our choice, of course, under the august patronage of His Highness. This we cannot do, so long as a healthy change is not effected in the present system of Government. We have also come to the conclusion that without such a change it is impossible for the communities individually or the country collectively to progress. We are, therefore, of this firm belief that the Government of His Highness should, before long, be modified on the following li yes:

the present system of administration i n the State shall be replaced by Responsible Government subject to the general control and residuary powers of His Highness the Maharaja Bahadur as hereinafter mentioned;

the Ministry shall be responsible to the Jammu and Kashmir Legislature and shall have, subject to such responsibility power to control the expenditure of the revenues of the State and also to make such grants and appropriation of any part of those revenues or of any other property which is at present under the control or disposal of the Council as reserved expenditure, save and except the following which shall remain under the control of His Highness the Maharaja Bahadur : (1) Expenditure of the Military Services (2) Expenditure classed Political and Foreign (3) Payments of all debts and liabilities hitherto lawfully contracted and incurred by His Highness-in-Council on account of Government of Kashmir (4) The Dharmath Trust;

the principle of responsibility to the Legislature shall be introduced in all the branches of administration of the Government subject to general control, reservations and residuary powers vested in His Highness in respect of control of Military, Foreign and Political Affairs etc., provided that the proposal of His Highness for appropriations of any revenues or monies for Military or other expenditure for Foreign and Political purposes shall be submitted to the vote of the Legislature, but that His Highness shall have power notwithstanding the vote of the Assembly to appropriate up to a fixed maximum any sum His Highness may consider necessary for such expenditure;

the Legislature shall consist entirely of members elected by constituencies formed on the system of the adult franchise. Provision should be made for the representation of labour, trade, landlords and educational interests in the Legislature by means of election;

the election to the Legislature shall be made on the basis of joint-electorates; seats should be reserved for the minorities, and all other safeguards and weightages should be guaranteed to them in the constitution for the protection of their legitimate linguistic, religious, cultural, political and economic rights according to the principles enunciated, accepted or acted upon by the Indian National Congress from time to time. In addition to the above the religious rights and sentiments of all the communities should always be respected and not interfered with;

all the subjects of the State, without distinction of creed and caste shall be admitted for services in all armier of defence and for that purpose His Highness shall be assisted by a Minister responsible to the Assembly; and

no subject of His Highness shall be liable to suffer in liberty, life, property or of associations and free speech or in respect of writing except under sentence by an ordinary court of justice and as a result of lawful and open trial.

All this cannot be given for the mere asking. It requires wise statesmanship from the side of the Government. Our earnest desire is to avoid a strife. Let the Government make an announcement accepting the above principles and if His Highness' Government is pleased to discuss these principles with us we shall certainly and whole-heartedly co-operate for this purpose. We are sure that if this is done there will reign peace all around.

(Sd.) Sh. Mohammad Abdullah, the President of the Kashmir Muslim Conference
(Sd.) M.M. Sayeed, Member Kashmir Assembly
(Sd.) G.M. Sadiq, Member Kashmir Assembly
(Sd.) Main Ahmad Yar, Member Kashmir Assembly
(Sd.) M.A. Beg, Member Kashmir Assembly
(Sd.) Pandit Kashyay Bhandu, Editor, The Kesari
(Sd.) Pandit Prem Math Bazaz
(Sd.) S. Budh Singh
(Sd.) Pandit Jia Lal Kilam
(Sd.) Ghulam Mohammad Bakshi
(Sd.) Pandit Sham Lal Saraf
(Sd.) Dr. Pandit Shambhoo Nath Peshin

64 Resolution State's People's Conference, Ludhiana Session

1939

On the Treaties of Indian Princes with the Paramount Power

Legal Document No 63

Whereas great stress has been laid on old treaties between the British power and the States and attempts have been made to use these treaties to perpetuate autocracy and the semi-feudal order which so long prevailed in the States and obstruct the progress of the people, it is necessary to point out the real character of these treaties, the manner and circumstances under which they were made, the person who made them, and the interpretations placed on them in later years. Out of 552 States in India only forty have such treaties and, these were usually made after a conflict between the officers and agents of the East India Company and persons who had no status of independence, but who had come to exercise authority over part of the country, after the collapse of the central authority in India, which resulted from the fall of the Mughal empire. The treaties were made without any reference to or regard for the people and applied to then existing circumstances. Gradually, as these circumstances changed they ceased to have any importance, and many of them were ignored or even completely abrogated long ago by the practice of the Political Department of the Government of India, which varied and developed with the changing policy of the Paramount Power. In any event the treaties made over a century ago cannot be considered binding on the people of the States at a time when conditions have entirely changed. The treaties are now used by the Paramount Power to intervene in the struggle for freedom in the States in favour of the Rulers, and the obligations of this power to protect the people from misrule and oppression is ignored.

This conference strongly of opinion that these treaties should be forthwith ended as being completely out of date and inapplicable to present conditions, and it calls upon the Paramount Power to refuse help to misrule and who attempt to crush the movement for freedom in these States.

65 Pandit Jawaharlal Nehru's remarks in treaty rights of Princes

In his Presidential Address Ludhiana Session in 1939

Legal Document No 64

We are told now of the so called independence of the States and of their treaties with the Paramount Power which are sacrosanct and inviolable and apparently must go on for ever and ever. We have recently seen what happens to international treaties and the most sacred of convenants when they do not suit the purpose of Imperialism. We have seen these treaties torn up, friends and allies basely deserted and betrayed and the pledged word broken by England and France. Democracy and freedom were the sufferers and so it did not matter. But when reaction and autocracy and imperialism stand to lose, it does matter and treaties, however moth-eaten and harmful to the people they might be, have to be preserved. It is a monstrous imposition to be asked to put up with these treaties of a century and a quarter ago, in the making of which the people had no voice or say. It is fantastic to expect the people keep on their chains of slavery, imposed upon them by force an fraud, and to submit to a system which crushes the life-blood out of them. We recognise no such treaties and we shall in no event accept them. The only final authority and paramount power that we recognise is the will of the people, and the only thing that counts ultimately is the good of the people.

66 Jammu and Kashmir Constitution Act

1939

Legal Document No 65

Whereas

It is expedient to consolidate and amend the law relating to the Government of.Tammu and Kashmir: we are hereby pleased to enact as follows:

Preamble.

This Act may be cited as the Jammu and Kashmir Constitution Act of 1966.

This Act shall extend to the whole of the Jammu and Kashmir State and shall come into force at once.

In this Act unless there is anything repugnant in the subject or context;

"Council" means the Council of Ministers of Jammu and Kashmir referred to in section 7;

"Gazettee" means the Jammu and Kashmir Government Gazette;

"His Highness" means 'His Highness the Maharaja Bahadur' of Jammu and Kashmir;

"Official" and "non-official" mean respectively a person who is and a person who is not in the Civil or Military Service of the State, provided that rules under this Act may provide for the holders of such offices or any of them as may be specified in the rules not being treated for purposes of this Act as officials;

"Rules" mean the rules made under this Act; and (f) "State" means the State of Jammu and Kashmir.

The territories for the time being vested in His Highness are governed by and in the name of His Highness, and all rights, authority and jurisdiction which appertain or are incidental to the government of such territories are exercisable by His Highness, except in so far as may be others is provided by or under this Act, or as may be otherwise directed by His Highness.

Notwithstanding anything contained in this or any other Act all powers, legislative, executive and judicial, in relation to the State and its government are hereby declared to be and to have always been inherent in and possessed and retained by His Highness and nothing contained in this or any other Act shall affect or be deemed to have affected the right and prerogative of His Highness to make laws, and issue proclamations, orders and ordinances by virtue of his inherent authority.

6. The Executive

Subject always to the provisions of sections 4 and 5 and subject also to such rules of business and allocation of portfolios and such other directions as to consultations with or reports to and confirmation by His Highness on special matters as His Highness may give from time to time by general or special orders in that behalf, the superintendence, direction and control of the civil administration and government of the State shall be vested in the Council.

The Council shall consist of the Prime Minister for the time being and such other Ministers of State as His Highness may appoint by Royal Warrant of appointment. The Prime Minister and the other Minister shall be responsible to His Highness and shall hold office during the pleasure of His Highness. The Prime Minister shall be the President of the Council.

Every person appointed to be a member of the Council shall before entering on the duties of his office make and subscribe before His Highness or any other officer authorised by His Highness in this behalf on oath of allegiance in the form set out in schedule I.

The Prime Minister may with the previous sanction of His Highness make rules for the more convenient transaction of the business of the Council.

His Highness may appoint a person qualified to be appointed a Judge of High Court to be Advocate General for the State subject to such rules as may be made by the Council in this behalf

It shall be the duty of the Advocate General to give advice on such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to hind by the Council;

The Advocate General shall be appointed for such period and on such salary or other remuneration and on such terms and conditions of service as Hiss Highness may fix.

Orders end other instruments made and executed in the name of His Highness or of the Council shall be authenticated in such manner as may be specified in rules to be made by His Highness and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by His Highness or the Council as the case may be.

The Council may make rules not inconsistent with this. Act for the following matters:

the term of office of the nominated members of' the Praja Sabha and the matter of filling casual vacancies among them;

the conditions under which and the manner in which persons may be nominated as members of the Praja Sabha;

the qualifications of electors, the constitution of constituencies and their territorial extent, the method of election of the members of the Praja Sabha and any matters incidental or ancillarythereto;

the qualifications for being or being chased as members of the Praja Sabha;

the final decision of doubts and disputes as to the validity of an election;

the prevention of corrupt practices at election;

the manner in which rules should be carried into effect;

regulating the course of business and the preservations of order in the Praja Sabha;

prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules;

fixing the dates and the procedure for the presentation and discussion of the annual financial statement;

fixing the halting and travelling allowances of members of the Praja Sabha for attending meetings of the Praja Sabha or of the Committees hereof.

the duties of Praja Sabha Under-Secretaries

the duties of the Advocate General; and

generally for carrying out the provisions of this Act.

THE LEGISLATURE

Subject to the provisions of this Act, the Legislature of the State shall consist of His Highness and a chamber to be known as the Praja Sabha.

The Praja Sabha shall consist of the President and seventy five other members.

The members of the Council shall be ex-officio members of the Praja Sabha.

Of the remaining members, forty shall be elected! and the rest nominated by His Highness.

Thirty three of the elected members shall represent the communities and the general constituencies shown in schedule II and seven shall represent the special constituencies shown in schedule III.

Of the nominated members referred to in subsection.

fourteen shall represent the areas and communities shown in Schedule IV, and

(b) not more than eight shall be officials.

Rules may be made under clause (c) of section 12 altering the- constituencies and their territorial extent as shown in schedule IV but such rules shall not have effect unless sanctioned by His Highness.

His Highness may for the purpose of any Bill introduced or proposed to be introduced in the Praja Sabha nominate not more than two persons having special knowledge or experience of the subject matter of the Bill, and these persons shall, in relation to the Bill, have, for the period for which they are nominated all the rights of members of the Praja Sabha, and shall be in addition to the members above referred to.

15. (1) Every Praja Sabha shall continue for three years from its first meeting;

Provided that His Highness may:

(a) at any time dissolve that Praja Sabha before the expiry of its term; or

(b) extend the term of the Praja Sabha if in special circumstances he so thinks fit.

(2) His Highness shall appoint a date not more than six months after the date of expiry of the term of the Praja Sabha or of its dissolution for its next session.

(a) there shall be every year at least one session of the Praja Sabha at Jammu and another at Srinagar;

(b) subject to the provisions of this section, His Highness may from time to time.

summon the Praja Sabha at such time and place as he thinks fit; or

prorogue the Praja Sabha; or

(iii) dissolve the Praja Sabha.

16. Communication by His Highness to the Praja Sabha may be made

in person; or

by message sent through the Prime Minister or any other Minister; or

by message sent through the President or any other person presiding under the provisions of section 20.

Communications by the Praja Sabha to His Highness shall be made by formal address submitted through the President after motion made and carried in the Praja Sabha.

The Advocate General shall have the right to speak in the Praja Sabha and to take part in its proceedings and in the Proceedings of any of its committees but shall not, merely by virtue of this section, have a right to vote.

The President of the Praja Sabha shall be appointed by His Highness for such term as he may fix and he may remove the President from office and fill casual vacancies in that office.

(1) The Praja Sabha shall choose one of its members to be the Deputy President thereof and so often as the office of the Deputy President becomes vacant the Praja Sabha shall choose another member to the Deputy President.

The Deputy President shall perform such duties of the President as may be assigned to him by the President with the approval of the Council and shall, during the absence of the President from any sitting of the Praja Sabha, act as President.

(3) During the temporary absence of the President and the Deputy President from a meeting of the Praja Sabha such person shall act as President as His Highness may by general or special order in that behalf direct.

A member holding the office of Deputy President shall vacate his office if he ceases to be a member of the Praja Sabha, may, at any time, resign his office by writing under his hand addressed to the Prime Minister, and may be removed from his office by a resolution of the Praja Sabha passed by a majority of the members then on the roll of the Praja Sabha.

His Highness may appoint from among the non-official members of the Praja Sabha as many under-Secretaries and for such period not exceeding the life of the Praja Sabha as he may think fit. An under-Secretary shall be attached to one or more ministers and will be assigned such duties in relation to the business coming before the Praja Sabha as may be prescribed by rules in this behalf.

Subject to the provisions of this Act, the Praja Sabha may make laws for whole State or any part thereof, and for the subjects of His Highness wherever they may be.

It shall not be lawful for the Praja Sabha to consider or deal with any matter or enact any law relating to or affecting:

His Highness or any member of the Royal Family or the management of the Royal house-hold;

relations, treaties, convention or agreements between the State and His Majesty the King Emperor of India or the Government of India or with Foreign powers or the Government of any State in India now subsisting or in force or hereafter to be established or made;

matters of frontier policy including those relating to Ladakh and Gilgit;

Such matters relating to the Jagirs of Poonch and Chenani as His Highness may specify;

rights specifically granted to Illaqadars or Jagirdars by their sanads;

the organization, discipline and control of the State Forces;

the departments declared by Highness from time to time as Hazure departments;

the Dharmarth Trust;

the provisions of this Act and the rules made thereunder and their repeal or modification; and

such other matters as may be specified by His Highness from time to time.

25. (1) All questions at any sitting of the Praja Sabha shall be determined by a majority of votes of the members present and voting other than the President or person acting as such:

Provided that, in the case of an equality of votes, the President or person acting as such shall exercise a casting vote.

The Praja Sabha shall have power to act notwithstanding any vacancy in the membership thereof and any proceedings in the Praja Sabha shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

If at any time during a meeting of the Praja Sabha less than one-fifth of the total number of members are present, it shall be the duty of the President or persons acting as such either to adjourn the Praja Sabha or to suspend the meeting until at least one-fifth of the members are present.

PROVISIONS AS TO MEMBERS OF THE PRAJA SABHA

Every member of the Praja Sabha, other than an ex-officio member, shall, before taking his seat, make and subscribe at a meeting of the Praja Sabha before the President or such person as may be authorised by His Highness in this behalf, an oath or affirmation in the form set out in Schedule 1.

(1) If a member of the Praja Sabha,

becomes subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section, or

by writing under his hand addressed to the Prime Minister resigns his seat, his seat shall thereupon become vacant.

(2) If for two consecutive sessions of the Praja Sabha a member is without the permission of the President absent from all meetings thereof, the President may declare his seat vacant.

28. (1) A person shall be disqualified for being chosen as or for being a member of the Praja Sabha,

if he is an official; (provided that this shall not apply to the exofficio members or to the officials nominated under section 14, or to the President or to the Deputy President, or to the Under Secretaries appointed under Section 2)

if he is under 25 years of age;

if he is of unsound mind and stands so declared by a competent Court:

if he is an undischarged insolvent or being a dischargedinsolvent has not obtained from a competent Court a certificate that his insolency was caused by misfortune without any misconduct on his part;

if he is a person against whom a conviction by a Criminal Court for an offence punishable a with sentence of imprisonment for a term of six months or more is subsisting or an order binding him to be of good

behaviour has been passed or an order of internment or externment passed by a Magistrate or the Council or His Highness is in force, unless a period of five years or such less period as His Highness may allow in any particular case has elapsed since release or the expiry of the period specified in the order;

if he has been convicted or has in proceedings for questioning the validity or regularity of an election, been found guilty of any offense or corrupt or illegal practice relating to elections, which has been declared by any law to be an offense or has been declared by any rule or order of the Council to be a practice entailing disqualification for membership of the Praja Sabha, unless a period of three years has expired from the date of such conviction or finding;

if, having been elected a member of the Praja Sabha, he has failed to lodge a return of election expenses within the time and in the manner required by the rules under this Act, unless a period of three years has expired from the date by which the return ought to have been lodged or His Highness has removed the disqualifications7

A person shall not be capable of being chosen a member of the Praja Sabha while he is serving a sentence of imprisonment for a criminal offense, or is under dentention for failure to furnish security for keeping the peace or for good behaviour.

Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Praja Sabha there shall be freedom of speech in the Praja Sabha and no member of the Praja Sabha shall be liable to any proceeding in any Court in respect of anything said or any vote given by him in the Praja Sabha or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of the Praja Sabha of any report, paper, votes or proceedings.

The President, the Deputy President and the Under Secretaries of the Praja Sabha shall receive such honoraria as may be determined by His Highness. The members of the Praja Sabha shall be entitled to receive such halting and travelling allowances as may be fixed by rules in this behalf.

LEGISLATIVE PROCEDURE

31.

Where a Bill has been passed by the Praja Sabha, the Prime Minister may, instead of presenting it for the assent of His Highness, return it to the Praja Sabha for reconsideration in whole or in part, together with any amendments which he may recommend.

Where a Bill has been passed by the Praja Sabha and has not been returned to it by the Prime Minister for reconsideration it shall be submitted for the assent of His Higness,who may declare either that the assent thereto, or withholds his anssent therefrom.

A Bill which is assented to under the last preeeding sub-section shall be published in the Gazette in English and shall then become an Act and have the force of Law.

In all the Regulations in force in the State on the date on which this Act comes into force and in the rules orders, proclamations and notifications issued under such Regulations, the word 'Act' shall, unless the context otherwise, requires, be substituted for the word 'Regulation'.

32. Subject to such restrictions and conditions as are imposed by this Act or may be imposed by rules or standing orders, any member may

ask questions; and

move resolutions: provided that no question shall be asked and no resolution shall be moved which affects the religious rights, usages, endowments or personal law of any community and is not asked or moved by a member of that community.

PROCEDURE GENERALLY

33. The business of the Praja Sabha shall be transacted in Urdu but any member may address the Praja Sabha in English.

Provided that the text of all Bills and amendments there to moved in, and of all Acts passed by, the Praja Sabha, which shall be treated as authoritative, shall be in English.

Where the Praja Sabha refuses leave to introduce, or fails to pass in a form recommended by the Council, any Bill, His Higness may declare that the proposed legislation is essential for the good government, safety or tranquillity of the State and such Bill shall, on such declaration, become an Act as if it had been passed by the Praja Sabha and assented to by His Highness.

If the Prime Minister at any time certifies that the discussion of a Bill introduced or proposed to be introduced in the Praja Sabha or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill or of any resolution or of an amendment there to would affect, the safety or tranquillity of the State or any part thereof, he may direct that no proceedings. or no further proceedings, shall be taken in relation to the Bill, clause or amendment, or resolution or its amendment, and effect shall be given to the direction.

It shall not be lawful, without the previous sanction of His Highness, to introduce, consider or pass any Bill affecting the religious rights, usages, endownments or personal law of any community, and no such Bill shall be deemed to be passed by the Praja Sabha unless two third of the members of the Praja Sabha from the community affected are present at the meeting of the Praja Sabha and vote in its favour.

No discussion shall be allowed in the Praja Sabha with regard to the conduct of any member of His Highness Board of Judicial Advisers or of any Judge of the High Court in the discharge of his duties.

Notwithstanding anything contained In this Act, the Council may, in case of emergency or where immediate legislation is required in any matter affecting the peace and good government of the State, submit to His Highness an Ordinance and such Ordinance on being assented to His Highness shall have the force of law for a period not exceeding six months from the date of its promulgation.

It shall not be lawful for the Praja Sabha to repeal or alter any ordinance passed under section.

Standing orders may be made and altered by the Praja Sabha providing for the conduct of business and the procedure to be followed in the Praja Sabha. Any standing order which is repugnant to the provisions of this Act or to any rules made thereunder shall to the extent of that repugnancy but not otherwise, be void.

PROCEDURE IN FINANCIAL MATTERS

41. The Council shall in respect of every financial year cause to be laid before the Praja Sabha a statement of the estimated receipts and expenditure of the State for the year:

Provided that the estimated receipts and expenditure relating to the Jagirs of Poonch and Chenani shall be shown separately in the statement.

42. The estimates of expenditure embodied in the annual financial statement shall show separately:

the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the State; and

the sums required to meet other expenditure proposed to be met from the revenues of the State.

43. The following expenditure shall be the expenditure charged on the revenues of the State:

expenditure on matters reserved from the cognizance of the Praja Sabha under section 24;

contributions payable to other Governments

expenditure obligatory under any law

interest on loans and sinking fund charges;

expenditure which may be classed by His Highness or the Council as political;

pensions and gratuities granted by His Highness or with his sanction or under the rules sanctioned by His Highness or the Council;

contributions, grants and scholarships sanctioned by His Highness;

salaries of the Judges of the High Court and the members of His Highness Board of Judicial Advisers:

salaries of such other officers as His Highness may specify from time to time; and

such other expenditure as His Highness may specify from time to time.

Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the State shall be decided by the Prime Minister and such decision shall be final.

So much of the estimates of expenditure as relates to the expenditure charged on the revenues of the State shall not be submitted to the vote of the Praja Sabha.

So much of the said estimates as relates to the other expenditure shall be submitted to the Praja Sabha in the form of demands for grants. The Praja Sabha shall have power to assent or to refuse to assent to any demand or to assent to a demand subject to a reduction of the amount specified therein. provided that:

the Council shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein specified, if the Council considers that the expenditure provided for by the demand is necessary for the carrying on of any department or for the discharge of the Council's responsibility for its administration; and

His Highness may in cases of emergency authorise such expenditure as may in his opinion be necessary for the safety or tranquillity of the State or any part thereof or for the carrying on of any department.

(3) No demand for a grant shall be made except on the recommendation of the Council.

If in respect of any financial year further expenditure from the revenues of the State becomes necessary over and above the expenditure authorised from that year, the Council shall have the power to authorise that expenditure. A statement of the expenditure so authorised shall be presented to the Praja Sabha along with the financial statement for the following year.

(1) A Bill or amendment making provision:

for imposing, increasing or decreasing any tax, or

for regulating the borrowing of money or the giving of any guarantee by the Council or for amending the law with respect to any financial obligation undertaken by the Council, or

for declaring any expenditure to be expenditure charged on the revenues of the State, shall not be introduced or moved except with the previous sanction of the Prime Minister.

A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the State shall not be passed by the Praja Sabha unless the Council has recommended to the consideration of the Bill.

THE JUDICATURE: THE HIGHCOURT

48.

the High Court referred to in this Act is the High Court established in the State by Order No. 1 of 1985 and styled as the High Court of Judicature, Jammu and Kashmir State; and

the High Court shall consist of a Chief Justice and two or more other Judges, as His Highness. may from time to time think fit to appoint.

49. Every Judge of the High Court shall be appointed by His Highness and shall hold office until he attains the age of fifty five years, unless His Highness otherwise directs:

Provided that:

a Judge may by resignation under his hand' addressed to the Prime Minister resign his office;

a Judge may be removed from his office by order of His Highness on the ground of misbehavior or of infirmity of mind or body.

50.

The Chief Justice shall have rank and precedence before the other Judges.

All the other Judges shall have rank and precedence according to the seniority of their appointments.

51. A person shall not be qualified for appointment as a Judge of the High Court unless he;

is a barrister of England or Ireland or member of the Faculty of Advocates in Scotland of not less than ten years standing; or

has for at least three years held a judicial office in the State not inferior to that of a District Judge; or

has for at least five years held a judicial office in the State or in British India, not inferior to that of a subordinate Judge, or a Judge of a Small Causes Court; or is an Advocate of the High Court or of any High Court in British India, and is a barrister of England or Ireland or a member of the faculty of Advocates in Scotland or a law graduate of any recognised University in India who has been practicing as an Advocate of the High Court or of any High Court in British India for a period of at least ten years.

The Chief Justice and the other Judges of the High Court shall receive such salaries and allowances as His Highness may from time to time fix in this behalf.

Every person appointed to be a Judge of the High Court shall before he enters upon his office make and subscribe His Highness or some person appointed by him an oath according to form set out in that behalf in schedule 1 of this Act.

The High Court of Judicature shall have and use as occasion may require a seal bearing and advice impression of the Jammu and Kashmir Coat of Arms with an exergue or label surrounding the same, with the following inscription, "The seal of the High Court of Judicature, Jammu and Kashmir". The said seal shall be delivered to and kept in the custody of the Chief Justice or of an officer the Court from time to time nominated by the Chief Justice.

All writs, summonses, precepts, rules order and other mandatory processes to be used by the High Court shall run and be in the name and style of His Highness and shall be sealed with the seal of the High Court.

The High Court is a Court of record.

The High Court shall have jurisdiction to hear and determine any original civil suit or other proceeding of which the value is not less than rupees ten thousand and every such suit or proceeding shall be instituted in the High Court.

The High Court shall have jurisdiction to entertain and dispose of such appeals, revisions and other cases-civil, criminal or revenue-as it may be empowered to do under any enactment in force in the State.

The usual places of sittings of the High Court shall be Jammu and Kashmir (Srinagar) and His Highness may by order direct for what period the High Court sit at each such place.

Whenever it appears to the Chief Justice convenient that the jurisdiction and power vested in the High Court by this Act or by any other enactment for the time being in force should be exercised in any place within the jurisdiction of any court subject to the superintendence of the High Court, other than the usual places of sitting of the High Court, or at several such places by way of circuit, one or more Judges of the High Court shall with the previous sanction of His Highness hold Court at such place or places.

Except as provided by any enactment of the time being in force, all original proceedings and suits shall be heard and decided by a single Judge of the High Court.

60.

Except as otherwise provided by any enactment for the time being in force and subject to any rules made in this behalf, the Jurisdiction of the High Court of Judicature may be exercised by a single Judge of the Court or by a bench of two or more Judges of the Court.

Except as otherwise provided by any enactment for the time being in force, an appeal from any original decree or from any order against which an appeal is permitted by any law for the time being in force passed or made by a single Judge of the High Court shall lie to a bench consisting of two other Judges of the High Court.

Unless such appeal is prohibited by any enactment for the time being in force an appeal from an appellate decree made by a single Judge of the High Court shall lie to a bench consisting of two other Judges of the High Court, where the Judge who passed decree declares that the case is a fit one for appeal.

The Chief Justice shall, subject to the provisions of this Act, determine which Judge in each case will sit alone and which Judge of the Court will constitute a bench.

When there is a difference of opinion among the Judges composing any bench of the High Court, the decision shall be in accordance with the opinion.. Of the majority of the Judges.

If there is no such majority, then

if the bench is a full bench, the decision shall be in accordance with the decision of the Senior Judge, and

in other cases the bench before which the difference has arisen shall either refer the question or the whole case for decision to a full bench.

63.

Any single Judge, and any bench of two Judges of the High Court, not being a full bench may, in any case, refer for the decision of a full bench any question of law, or custom having the force of law, or of the construction of any document, or of the admissibily or any evidence, arising before such single Judge or bench and shall dispose of the case in accordance with the decision of the full bench.

Any Judge of the High Court may, if he thinks fit, refer any appeal or application coming before him for hearing as a single Judge to a bench of two Judges for decision.

64.

Subject to such rules and regulations as His Highness may make, the High Court shall have superintendence and control over all Courts for the time being subject to its appellate or revisional jurisdiction, and all such Courts shall be subordinate to the High Court.

The Chief Justice, or a Judge of the High Court authorised by him in this behalf, shall from time to time visit and inspect the proceedings of the Courts subordinate to the High Court and shall give such directions in matter not provided for bylaw as may be necessary to secure the due administration of justice.

65.

The High Court may, subject to the sanction of the Council and on such terms as to salary, allowances, promotion, leave, suspension and dismissal, as may be sanctioned by the Council, appoint a Registrar and a Deputy Registrar.

The High Court may delegate to the Registrar or the Deputy Registrar or both such judicial, quasijudicial or administrative powers as it may deem fit.

The High Court shall comply with such requisitions, as may, from time to time, be made under the commands of His Highness for records, returns and statements in such form or manner as His Highness may require;

(1) The High Court may, consistently with the laws for the time being in force, make rules:

to regulate the practice of the Court;

to regulate the practice of the Courts subordinate thereto,

to provide for the forms to be used in the High Court and the Courts subordinate thereto for such proceedings, books, entries, statistics, and accounts as it thinks fit;

to provide for the inspection of Courts subordinate thereto and the supervision of the work thereof;

to regulate all such matters as it may think fit with a view to promote the efficiency of the judicial and ministerial officers of the High Court and of the Courts subordinate thereto, and the maintaining of proper discipline among those officers; and

prescribing the qualifications for and admission of persons to the Advocates, Vakils and Attorneys-at-law of the High Court and providing for the removal or suspension from practice, on reasonable cause, of the said Advocates, Vakils and Attorneys-at-law

(2) Such rules shall be made with approval of a majority of tile Judges of the Court and the sanction of the Council.

The High Court shall have the power to approve, admit and enroll such and so many Advocates, Vakils, and Attorneys-at-law, as it may deem fit.

The High Court shall have the poker to punish with fine not exceeding rupees one thousand or with simple imprisonment for a period not exceeding six months or with both any person who is guilty of contempt in relation to itself or to any Court subordinate to it; Provided that the High Court shall not take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it when such contempt is an offense punishable under the Ranbir Penal Code.

Notwithstanding anything provided in any enactment to the contrary, no Judge of the High Court sitting in a full bench thereof shall, by reason of his having: decided or otherwise dealt with any case, be barred from hearing and deciding the case.

HIS HIGHNESS' BOARD OF JUDICIAL ADVISERS

71.

His Highness may appoint a Board of Judicial Advisers to advise him for the disposal of such civil and criminal appeals as may, under the law for the time being in force, lie to His Highness from the decisions of the High Court, and on such other matters as His Highness may choose to refer to such Board for advice.

Such Board shall - be composed of as many members as His Highness may from time to time determine and such members shall be appointed by His Highness for such period and no such terms as to salary and other conditions of service as His Highness may consider proper.

Every person appointed to be a member of the Board shall, before he enters upon his office, make and subscribe before His Highness or some person appointed by him an oath according to the form set out in that behalf in Schedule 1 of this Act.

His Highness may appoint any person as an exofficio member of the Board of Judicial Advisers to discharge the functions of the Board during the period such Board is not in session, provided that Such ex-officio member shall not sit on the bench of the Board for hearing any appeal or other matter as is referred to such Board for advice.

His Highness may make rules regulating the procedure regarding the filing of appeals to His Highness, the place or places and the period of sittings of the Board of Judicial Advisers and the hearing as such appeals and other matter as are referred to the Board for advice.

The Board may, from time to time with the sanction of His Highness, add to, alter or amend the rules of procedure in such manners as they think fit.

ROYAL PREROGATIVE

72. Nothing herein contained and nothing contained in any other enactment for the time being in force, shall be deemed to affect in any way or derogate from the inherent power and preprogative of His Highness or to affect in any way his prerogative of mercy and pardon, or his power of remitting, commuting or reducing sentences conditionally or otherwise.

GENERAL CONSTITUENCIES

S. No. (1)	Name of Constituency (2)	Extent of Constituency (3)	No. of Members (4)
(A) MUSLIM			
1	Jammu City Muslim	The City of Jammu	1
2	Jammu Rural Muslim	The wazarat of Jammu excluding Jammu City	1
3	Udhampur Muslim	The Wazarat of Udhampur	1
4	Reasi Muslim	The Wazarat of Reasi	1
5	Kathua Muslim	The Wazarat of Kathua	1
6	Mirpur-Kotli	The Tehsils of Mirpur and Kotli	1
7	Bhimber	The Tehsil of Bhimber	1
8	Haveli-Mandhar	The Tehsils of Haveli and Mendhar, Jagir Poonch.	1
9	Bagh Sudhnuti	The Tehsils of Bagh and Sudhnuti, Jagir Poonch	1
10	Amirakadal	Ward No. 1 Srinagar City	1
11	Rainawari-Mahrajganj	Ward Nos. 5,6 and 8 Srinagar City.	1
12	Fateh Kadal - Tankipura	Ward Nos. 2 and 3 Srinagar City.	1
13	Shah Hamdan	Ward No. 4 Srinagar City	1
14	Tashwan	Ward No. 7	1

		Srinagar City	
15	Awantipur	The Tehsils of Srinagar excluding Srinagar City, and Pulwama.	1
16	Anantnag	The Tehsil of Anantnag	1
17	Kulgam	The Tehsil of Kulgam	1
18	Handwara	Uttarmachipura Tehsil	1
19	Badgam	Sri Pratapsinghpura Tehsil	1
20	Baramulla	The Tehsil of Baramulla	1
21	Muzaffarabad	The Wazarat of Muzaffarabad	1
(B) HINDU			
22	Jammu City North	Ward Nos. 1, 2 and 3 Jammu City	1
23	Jammu City South	Ward Nos. 4,5,6 and 7 Jammu City	1
24	Jammu Rural	The Wazarat of Jammu, excluding Jammu City	1
25	Udhampur Hindu	The Wazarat of Udhampur	1
26	Reasi Hindu	The Wazarat of Reasi	1
27	Kathua Hindu	The Wazarat of Kathua	1
28	Mirpur Hindu	The Wazarat of Mirpur	1

29	Srinagar South	Ward Nos. 1,2 and 3 Srinagar City	1
30	Srinagar North	Wards Nos. 4,5,6,7 and 8 Srinagar City	1
31	Kashmir Hindu	The Wazarats of Kashmir North, Kashmir South (excluding Srinagar City and Muzaffarabad)	1
(C) SIKH			
32	Mirpur-Poonch Sikh	The Wazarat of Mirpur and jagir of Poonch	1
33	West Kashmir Sikh	The Wazarat of Muzaffarabad and Tehsil Uttarmachipura and Baramulla	
SPECIAL CONSTITUENCIES			
S. No. (1)	**Name of Constituency (2)**	**Extent of Constituency (3)**	**No. of Members (4)**
TAZIMI SARDARS			
1	Jammu Province including Chenani and Poonch Jagirs.		1
2	Kashmir Province including Frontier Districts.		1
(B)JAGIRDARS, MUAFIDARS, MUKKARARIDARS Holding a Jagir, -Muafior Mukkarari from the State on not less than Rs. 500 per annum.			
3	Jammu Province including		1

	Chenani and Poonch Jagirs.		
4	Kashmir Province including Frontier Districts.		1
(C)LANDHOLDERS Owing land assessed to Land Revenue of not less than Rs.250 per annum.			
5	Jammu Province including Chenani and Poonch Jagirs.		1
6	Kashmir Province including Frontier Districts.		1
(D) PENSIONERS Receiving Rs. 100 or more as persion per month.			
7	Jammu and Kashmir State.		1
AREAS FOR WHICH MEMBERS SHALL BE NOMINATED			
S. No. (1)	**AREAS (2)**	**COMMUNITY (3)**	**No. of Members (4)**
1	Ladakh Wazarat	Buddhist	2
2	Skardu Tebsil	Muslim	1
3	Kargil Tehsil	Muslim	1
4	Gilgit Wazarat	Muslim	1
5	North Kashmir Wazarat	Muslim	1
6	South Kashmir Wazarat	Muslim	1
7	Muzaffarabad Wazarat	Muslim	1
8	Jammu Wazarat	Hindu	1

9	Udhampur Wazarat	Hindu	1
10	Srinagar City	Hindu other than Kashmari Pandit	1
11	Poonch Jagir	Hindu	1
12	Chenani Jagir	Hindu	1
13	Wazarat Jammu, Udhampur, Reasi, Kathua, Sikh Kashmir South and Sri Pratapsinghpura	Sikh	1

67 Jammu and Kashmir Praja Sabha Rules of Business and Procedure

1939

Legal Document No 66

(Extract)

CHAPTER II

DURATION AND SESSION OF THE PRAJASABHA

6. **Summoning** of Praja Sabha and dates of meeting:

The Secretary will issue a notice to each member of the time and place at which the Praja Sabha is summoned by His Highness and such notice shall be issued sixty clear days before the date for which the Praja Sabha is summoned.

After the commencement of a session the Praja Sabha shall sit on such days as the Prime Minister, having regard to the State of business, may from time to time direct.

7. Termination of the Session .... (l) A session of the Praja Sabha is terminated by progation by His Highness. (2) On the termination of a session

all pending notices shall lapse so that a member will be required to send new notices in regard to business for the next session;

any bill which has been introduced, and any motion for the amendment of the standing orders, which has received the leave of the Praja Sabha, shall be carried over to the pending list of business of the next session:

Provided

that if the member-in-charge of a bill makes no motion in regard to the same during the next two sessions, the bill shall lapse.

8. Effect of dissolution...on the dissolution of the Praja Sabha all questions and all bills other then Government bills shall lapse excepting as may be provided for by standing orders made in this behalf.

CHAPTER III

THE PRESIDENT, THE DEPUTY PRESIDENT AND THE SECRETARY

9. Election of the Deputy President...the Praja Sabha shall choose a Deputy President in the following manner:

The President shall fix a date for elector of the Deputy President.

At any time before noon on the day preceding the date so fixed, any member may nominate another member for election by delivering to the Secretary a nomination paper containing the name of the member nominated and signed by himself as proposer and by a third member as seconder and also by the member nominated in token of his consent to serve as Deputy President, if elected.

On the date fixed for election the President shall read out to the Praja Sabha the names of the candidates nominated together with those of their proposers and seconders; and if only one person has been nominated for election, the President shall declare that person to be duly elected. If more than one person has been nominated, the Praja Sabha shall then proceed to elect a Deputy President by ballot.

The ballot shall be taken in such manner as the President may determine and the candidate, who obtains more votes than those obtained by the other candidate, or than the aggregate of the votes obtained by the other candidates, as the case may be, shall be declared duly elected.

Where more than two candidates have been nominated and at the first ballot no candidate obtain more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and fresh ballot shall take place, the

candidate obtaining the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidates, or than the aggregate votes of the remaining candidates, as the case may be.

Where at any ballot any of three or more candidates obtain an equal number of votes the candidate to be excluded from the election under clause (5) shall be determined by drawing of lots.

Where any two candidates have been nominated and they obtain equal votes, or where the two candidates remaining after the exclusion of others under clause (5) obtain equal votes, the President shall give his casting vote and the candidate in whose favour such casting vote is given shall be declared duly elected.

CHAPTER VIII

LEGISLATION

A. INTRODUCTION OF BILLS

Publication of bills before introduction...The Council may order the publication of any bill together with the statement of objects and reasons in the gazette although no motion has been m,ade for leave to introduce the bill. In that case it shall not be necessary to move for leave to introduce the bill and if the bill is afterwards introduced, it shall not be necessary to publish it again.

Notice of a motion for leave to introduce bill....(l) Any member, other than a member acting on behalf of the Council, desiring to move for leave to introduce a bill, shall give notice of his intention to do so and shall together with the notice, submit a copy of the bill and a full statement of objects and reasons....(2) If the bill is a bill which under the Act requires sanction, the member shall annex to the notice a copy of such sanction, and the notice shalt not be valid until this requirement is complied with.

Effect of certification by Prime Minister....If the Prime Minister certifies that a bill or any clause of a bill or any amendment to a bill affects the safety and tranquility of the State, or any part of it, and directs that no proceedings or no further proceedings shall be taken thereon, all notices of motions in connection with the subject matter of the certificate shall lapse and if any such motion has not already been set down in the list of business, it shall not be so set down. If any such motion has been set down on the list of business, the President shall, when the motion is reached, inform the Praja Sabha, and the Praja Sabha shall forth well without debate proceed to the next item of business.

Motion for leave to introduce a bill.... (l) Except when the publication of a bill has been made as provided in rule 62, any member desiring to introduce a bill in the Praja Sabha shall make a motion for leave to introduce the bill and if the motion is not opposed by any other member, the motion shall be deemed to have been carried...(2) The precedence of motions for leave to introduce nonofficial bills shall be determined by ballot to be held in accordance with the rules contained in Schedule I.

Procedure when motion for leave to introduce is opposed ...lf a motion for leave to introduce is opposed, the President, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes the motion, may put the question without further debate.

Introduction of bills....At any time after a bill has been published in the gazette under orders of the Council as provided in rule 62, or after the motion for leave to introduce has been carried, the member-in-charge of the bill may introduce it.

Publication of the bills after introduction....As soon as may be after a bill has been introduced, the bill, unless it has already been published, shall be published in the gazette.

Supply of copies to members....After a bill has been published under rule 62 or under the preceding rule, copies thereof shall be made available to the members.

Motions alter introduction....When a bill is introduced or on some subsequent occasion the member-in-charge may make one of the following motions in regard to the bill, namely:

that it be taken into consideration by the Praja Sabha either at one or at some future day to be then specified; or

that it be referred to a Selection Committee; or

that it be circulated for the purpose of eliciting opinion thereon.

Provided that no such motion shall a be made until after copies of the bill have been made available for the use of members, and that any member may object to any such motion being made unless copies of the bill haste been so made available to him for three dales before the day on which the motion is made, and such objection shall prevail, unless the President in the exercise of his power to suspend this rule, allows the motion to be made.

Persons by whom motions in respect of bills may be made....No motion that a bill be taken into consideration or be passed shall be made by any member other than the member-in-charge of the bill, and no motion that a bill be referred to a Select Committee, or circulated, or re-circulated for the purpose of eliciting opinion thereon, shall be made by any member other than the member-in-charge, except by way of amendment to a motion made by the member-incharge.

Discussion of principles of bills....(l) On the day on which any of the motions referred to in rule 70 is made, or on any subsequent day to which the discussion thereof is postponed, the principle of the bill and its general provisions may be discussed, but the details of the bill must not be disc cussed further than is necessary to explain its principle...(2) At this stage no amendments to the bill may be moved, but;

if the member-in-charge moves that the bill be taken into consideration, any member may move as an amendment that the bill be referred to a Select Committee or be circulated for the purpose of eliciting opinion thereon by a date to be specified in the motion; or

if the member-in-charge moves that the bill be referred to a Select Committee, any member may move as an amendment that the bill be circulated for the purpose of eliciting opinion thereon by a day to be specified in the motion

When a motion that the bill be circulated for eliciting opinion is moved as an amendment and is carried no motion that it be referred to a Select Committee shall be moved or put to vote; and When a motion that the bill be referred to a Select Committee is made as an amendment and is carried, no motion that it be circulated for eliciting opinion shall be moved or put to vote.

Where a motion that a bill be circulated for the purpose of eliciting opinion thereon is carried, and the bill is circulated in accordance which that direction and opinions are received thereon, the member-in-charger if he wishes to proceed with his bill thereafter, must move that the bill be referred to a Select Committee, unless the President in the exercise of his power to suspend this rule, allows a motion to be made that the bill be taken into consideration.

73. Provision in case of failure of Praja Sabha to pass legislation where a declaration has been made under section 34 of the Act in respect of a bill, any motion made in regard to such bill shall be deemed to have been with drawn.

B. SELECT COMMITTEES

Constitution of Select Committees....The Minister to whose Department the bill relates and not more than eight other members, including in the case of a private bill the member who introduced the bill, shall be members of every Select Committee, provided that when any members have been nominated under subsection (7) of section 14 of the Act for the purpose of the bill, they shall be ex-officio members of the Select in Committee addition to the number above referred to.

Election of members....(l) The members of the Select Committee other than the Minister and the member-incharge if any, shall be elected by the Praja Sabha when the motion that the bill be referred is made. (A there is no opposition to the names proposed, all the members proposed will be deemed to be duly elected. In case any member objects to the name of a particular member and desires his substitution by another member, the President shall put the question to the vote of the House and the member elected by majority of votes shall be the duly elected member.

Vacancy on the Select Committee... (1) In case of a vacancy occurring among the elected members of a Select Committee when the Praja Sabha is in session, the Praja Sabha may elect a member to fill the vacancy. (2) In case thevacancy occurs through death, resignation, inability to attend to duty or otherwise

at a time when the Praja Sabha is not sitting, and the appear matters to be urgent, the President, may appoint any member to fill such vacancy.

Chairman....The Minister-in-charge of the Department to which the bill relates shall be the Chairman of the Select Committee, or in his absence, any other member of the Committee whom he may nominate shall act as Chairman.

Quorum:

No business shall be transacted at any sitting of the Select Committee unless a majority of the members of the Committee including the member-in-Charge of the bill be present. All matters in the Select Committee shall be decided by majority of votes of the members at a meeting and in the case of an equality of votes the Chairman shall haven second or casting vote.

If at any time fixed for any meeting of the Select Committee, or if at any time during, such meeting the quorum of members, fixed by this rule is not present. the Chairman of the Committee shall either suspend the meeting unless the quorum is present or adjourn the Committee to some future date.

Where the Select Committee has been adjourned in pursuance of sub-rule (2) on two successive days fixed for the meetings of the Committee, the Chairman shall report the fact to the Praja Sabha.

Attendance of officials....The Chairman of the Select Committee may cause any official to attend a Select Committee whose assistance he may require but such officials hall not have a vote as a member of the Committee.

Hearing expert evidence - The Select Committee may hear expert evidence and reparesentative of special interests affected by the measure before them.

Reports of Select Committee:

After publication in the gazette of a bill as required by the rules, the Select Committee to which the bill has been referred shall make a report thereon.

Such report shall be made not-sooner than two months from the date of the first publication of the bill in the gazette unless the Praja Sabha orders the report to be made sooner.

Reports may be either prelirrlinary or final, and shall be authenticated by the signature of the Chairman.

If the Praja Sabha has fixed a period within which the Select Committee shall submit its report upon be unable for any reason to submit its report within that period, the President, may, from time to time, extend period on the application of the member-incharge of the bill.

The report of a Select Committee shall state the date on which the bill was published in the gazette and whether in the opinion of the Committee the bill has been so altered as to require republication or not. The report shall be signed by the members and if any member desires to record a minute of dissent on any point, he must sign the majority report, stating that he does so subject to his minute of dissent which must be handed over to the Chairman within 3 days of the date on which he signs the report.

The report of a Select, Committee together with the minutes of dissent, if any, and the amended bill where republication of the bill is considered necessary shall be published in the gazette by the Secretary of the Praja Sabha and a copy of the report shall be made available for the use of every member of the Praja Sabha.

President's power to order reprint: If a Select Committee has reported that the bill in their judgement does not require republication, the President, if he considers. that for the purpose of facilitating the discussion of the bill in the Praja Sabha a reprint of the amended bill is required he may direct that the bill as amended by the Select Committed be reprinted and copies of the reprinted bill be supplied to members of the Praja Sabha.

Presentation of the report:

The report of a Select Committee shall be presented to the Praja Sabha by the member-in-charge of the bill.

In presenting the report the member-in-charge shall, if he makes any remarks, confine himself to a brief statement of facts, but there shall be no debate at this stage.

84. Procedure after presentation: (1) After the presentation of the final report of a Select Committee on a bill, the member-in-charge may move:

that the bill as reported by the Select Committee be taken into consideration, provided that any member of the Praja Sabha may object to its being so taken into consideration, if a copy of the report has not been made available for his use for seven days and such objection shall prevail, unless the President, in the exercise of his power to suspend this rule allows the report to be taken into consideration; or

that the bill as reported by the Select Committee he recommitted either:

without limitation; or

with respect to particular clauses or amendments only; or

with instructions to the Select Committee to make some particular or additional provision in the bill.

(2) If the member-in-charge moves that the bill be taken into consideration, any member may move as an amendment that the bill be re-committed.

CHAPTER IX

RESOLUTIONS

Notice of resolutions...A member who proposes to' move a resolution shall give to the Secretary notice in writing of his intention and shall submit together with the notice a copy of such resolution. Provided that a member shall not give notice of more than two resolutions per day of the days assigned for non-official resolutions.

Form and content of resolutions....No resolution shall be admitted unless it complies with the following conditions, namely:

It shall be related to a matter of general public interest which is within the competence of the Council to deal with.

It shall be in the form of a specific recommendation addressed to the Council.

It shall be clearly and precisely expressed and shall raise substantially a definite issue.

It shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity.

It shall not relate to any matter which is under adjudication by a court of law.

Admissibiltty of resolutions....The President shall decide on the admissibility of a resolution. If a resolution does not in his opinion comely with the Act or the rules, he may disallow it or may, give the member an opportunity to amend the form of a resolution to bring it into conformity with the rules. If the defect is of a purely verbal or formal character the President may himself amend the resolution and admit it. The ruling of the President as to whether any resolution complies with the rules or not shall be finch

Intimation to members....The Secretary shall give intimation to the members that the resolution has been admitted or disallowed or allowed as amended by the President as the case may be.

Priority of resolutions on the list of business....Tl:e resolutions which have not been disallowed by the President shall be entered in separate lists of each day allotted to non-official resolutions and the priority of resolutions for purpose of discussion shall be determined by a ballot to be held by the Secretary: Provided that no member shall ballot for more than one resolution for one day and not more than seven resolutions shall be entered in the list of resolutions for one day.

Motion and withdrawal of resolutions.... (1) If any member in whose name a resolutions stands on the list of business when called on is absent the resolution shall be deemed to have been withdrawn.

If a member in whose name a resolution stands in the list of bossiness is called on to move it he may with permission of the President authorise any other member in whose name the same resolution stands also in

the list of business: for that day, to move it on his behalf and the member so authorised may move accordingly.

When a member moves a resolution he shall commence his speech by a formal motion in the terms appearing on the list of business.

101. Duration of speeches on a resolution except with the permission of the President, shall exceed fifteen minutes in duration:

Provided that the mover of a resolution, when moving the same, and the Minister to whose department the resolution relates, or his Under-Secretary or any official member authorised by Minister to speak on his behalf when speaking for the first time, may speak for thirty minutes, or for such longer time as the President may permit.

The limit of discussion. The discussion of a resolution shall be strictly limited to tile subject of a resolution.

Seconding of resolutions....As soon as a resolution has been moved, it shall be seconded by another member, and no discussion shall be permitted on a resolution which is not so seconded.

Amendments and their notice....After a resolution has been moved, any member may, subject to the rules and standing orders relating to resolutions, move an amendment to the resolution.

Notice of amendments....(l) If notice of such amendment has not been given two clear days before the day of on which the resolution is moved, any member may Object to the moving of the amendment, and such objection shall prevail, unless the President, in the exercise of his power to suspend this rule allow the amendment to be moved.

The Secretary shall, if time permits, cause a copy of every amendment to be made available for the use of every member.

CHAPTER X

FINANCIAL BUSINESS

The Annual Financial Statement....A statement of the estimated annual expenditure and revenue of the State(hereinafter referred to as the "Annual Financial Statement") shall be presented, each year, to the Praja Sabha on such day as the Prime Minister may appoint.

Note: - The estimated annual expenditure and revenues of the Jagirs of Poonch and Chenani shall be shown separately.

Financial Statement not to be discussed on presentation. There shall be no discussion of the Annual Financial Statement on the day on which it is presented to the Praja Sabha.

Demand for Grant....

A separate demand shall) ordinarily be made in respect of the grant proposed for each department, provided that the Government may in their discretion include in one demand grants proposed for two or more departments, or make a demand in respect of expenditure which cannot readily be classified under particular departments.

Each demand shall contain, first a statement of the total grant proposed, and then a statement of the detailed estimate under each grant divided into items.

Subject to these rules, the annual financial statement shall be presented in such form as the Council may consider best fitted for its consideration by the Praja Sabha.

114. Stages of the debate. . .. The Annual financial statement shall be dealt with by the Praja Sabha in two stages, namely:

(1) a general discussion; and (2) the voting of demands for grants.

General discussion....

On a day to be appointed by the Prime Minister subsequent to the day on which the annual financial statement is presented and for such time as the Prime Minister may allot for this purpose the Praja Sabha

shall be at liberty to discuss the statement as a at whole, or any question of principle involved therein, but this stage no motion shall be moved, nor shall the statement be submitted to the vote of the Sabha.

The Minister-in-Charge of the Finance Department of any official member authorised by the Prime Minister shall have a general right of reply at the end of the discussion.

The President may, if he thinks, fit, prescribe a time limit for speeches.

Voting Grants....

The voting of demands for grants shall take place in such order, and on such days not exceeding six days in the aggregate, as the Prime Minister may allot for the purpose.

The Prime Minister shall fix a time limit for the discussion of any one demand or a group of demands. As soon as the maximum limit of time for discussion is reached, the President shall forthwith put every question necessary to dispose of the demand under discussion.

On the last day of the allotted days at 4 p.m. the President shall forthwith put every question necessary to dispose of the demand under discussion and all other outstanding demands for grants.

Motions at this stage...

When a demand for a grant is made motions may be moved to omit or reduce the grant, but not to increase or alter its destination.

When notice of a motion to omit or reduce any grant is given, it shall be accompanied by a brief note explaining the purpose of the motion.

The subject-matter of a motion shall relate only to the particulars contained in the estimates on which the grant is demanded and the purpose for which it is demanded, and shall not touch on the policy or expenditure sanctioned under other heads except so far as such policy or expenditure is brought before the Praja Sabha by the items contained in the grant.

A motion shall be clearly and definitely expressed and shall raise a definite issue.

(a) When several motions relating to the same demand are offered, they shall be discussed hi the order in which the heads to which they relate appear in the annual financial state meet.(b) Motions falling under the same shall head shall be discussed in the order in which notices thereof halve been received by the Secretary:

Provided that the President may in his discretion permit a departure from this sub-rule.

Notice of motions...lf notice of a motion to omit or reduce any grant has not been given four clear days before the day on which the demand is under consideration, any member may object to the moving of the motion and such objection shall prevail unless the President in the exercise of his power allows the motion to be made at shorter notice.

Intimation to Finance Department...When the Praja Sabha has refused its assent to any demand or has assented to any demand subject to a reduction of an amount specified therein the Secretary shall send an intimation of the same to the Finance Department.

CHAPTER XI
STANDING COMMITTEES

124. Appointment of the Standing Committees...Standing Committees may be constituted for all or any of the following departments:

(i) Finance
(ii) Industries
(iii) Public Health
(iv) Education
(v) Agriculture

(vi) Forest; and
(vii) Co-operation.

125. Composition...

Every committee so constituted shall consist of the Minister-in-charge of the department concerned and 6 non-official members of the Praja Sabha as the President in consultation with the Prime Minister and leaders of different groups in the Praja Sabha may select.

Selection of non-official members...The President shall during the currency of the budget session of the Praja sabha make the section of non-official members for a Standing Committee on receipt of a request to that effect from the Minister-in-charge of the department concerned.

The list of non-official members selected by the President shall be put on the Notice-board of the Praja Sabha. Within two days of the list being so put up any non-official members of the Praja Sabha may move a resolution for the removal of any name appearing on the list and the substitution of the name of any other non-official member not appearing on the list.

Chairman...The Minister-in-Charge of the department concerned shall be the Chairman of the Standing Committee.

Proceedings of Standing Committee shall not be disclosed by any member without the leave of the Chairman and no reference to the proceedings shall be made in the Praja Sabha except in so far as they have been disclosed with the leave or under the orders of the Chairman.

Vacancies...The President shall nominate members to fill vacancies as they occur amongst the non-official nonofficial members of the Standing Committees. In making his selection the President shall endeavour to give representation to the group previously represented by the November whose place has to be filled.

68 Board of Judicial Advisors Procedure Rules

1941

Legal Document No 67

(Extract)

LEAVE TO APPEAL

VIII. **An** appeal shall be brought either in pursuance of leave obtained from the court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Highness upon a petition in this behalf presented by the appellant.

SPECIAL LEAVE TO APPEAL

IX. A petition for special leave to appeal to His Highness shall be filed before the Registrar of the Board. It shall state succinctly and clearly all such facts as it may be necessary to state to enable the Board to advice His Highness whether such leave ought to be granted and shall be signed either by a counsel or by the party himself if he appears in person or by his agent. It shall be accompanied by a copy of the judgment sought to be appealed from and a copy of the judgment (if any) of each of the courts below. The petition shall deal with facts only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave is sought.

ADVICE

LII. The advice recorded by the Board shall indicate, by whom the costs of the proceedings before it and the courts below (if any) shall be paid and who should bear the costs of the reference. It shall not be delivered at or after the hearing and shall be treated as a confidential document till His Highness has passed orders on the same. It shall be handed over to the Registrar of the Board, who shall fore and the same, to the Prime Minister for submission to His Highness.

LIII. When the orders of His Highness have been passed, the Registrar of the Board shall prepare a Decree or a Formal Order in terms of His Highness' Orders. The Decree or formal order besides embodying the orders of His Highness in respect of the subject matter of the proceedings before the Board, shall show how the costs incurred in them are to be borne.

LIV. When a Decree or Formal Order has been prepared as directed in the Rule proceeding, a copy of the advice and the Decree or the Formal Order as the case may be, shall be sent to the High Court, or to the Registrar of the Department from which the reference arose. The original record of the case shall be sent back to the Registrar of the court or department concerned, by the Registrar of the Board.

69 Pakistan Resolution of the Lahore Session of the All India Muslim League

February 22-March 4, 1940

Legal Document No 68

While approving and endorsing the action taken by the Council and the Working Committee of the All-India Muslim League, as indicated in their resolution dated the27th of August, 17th and 18th September and 22nd of October 1939, and 3rd of February 1940 on the constitutional issue, this Session of the All-India Muslim League emphatically reiterates that the scheme of federation embodied in the Government of India Act, 1935, is totally unsuited to, and unworkable in the peculiar conditions of this country and is altogether unacceptable to Muslim India.

It further records its emphatic view that while the declaration dated the 18th of October 1939 made by the Viceroy on behalf of His Majesty's Government is reassuring in so far as it declares that the policy and plan on which the Government of India Act, 1939 is based will be reconsidered in consultation with the various parties, interests and communities in India, Muslim India will not be satisfied unless the whole constitutional plan is reconsidered de nova and that no revised plan would be acceptable to the Muslims unless it is framed with their approval and consent.

Resolved that it is the considered view of this Session of the All-India Muslim League that no constitutional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basis principles, viz. that geographically contiguous units are demarcated into regions which should be constituted with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority as in the North-Western and Eastern and zones of India should be grouped to constitute 'Independent State' in which the constituent units shall be autonomous and sovereign.

The adequate, effective and mandatory safeguards should be specifically provided in the Constitution for Minorities in these units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them and in mother parts of India where the Mussalmans are in a minority adequate, effective and mandatory safeguards shall be specifically provided in the Constitution for them and other Minorities for the protection of their religious, cultural, economics political, administrative and other rights and interests in consultation with them.

70 Mr. Jinah's Demand for a Seperate Homeland for Muslims

March 22, 1940

Legal Document No 69

(Extract)

As far as our internal position is concerned, we have also been examining it and, you know, there are several schemes which have been sent by various well-informed constitutionalists and others who take. interest in the problems of India's future Constitution and we have also appointed a sub-committee to examine the details of the schemes that have come in so far. But one thing is quite clear. It has always been taken for granted mistakenly that the Mussulmans are a Minority and of course we have got used to it for such long time that these setlled notions sometimes are very difficult to remove. The Mussulmans are not a Minority. The Mussulmans are a nation by any definition. The British and particular.y the Congress proceed on the basis, well, you are a Minority after all what do you want ? What elso do the minorities want ? Just as Babu Rajendra Prasad said. But surely the Mussulmans are not a Minority. We find that even according to the British map of India we occupy large parts of this country, where We Mussalmans are in a majority such as Bengal, the Punjab, Northwest Frontier Province, Sind and Baluchistan.

The problem in India is not of an inter-communal character but manifestly of an international one, and it must be treated as such. So long as this basic and fundamental truth is not realized, any Constitution that may be built will result in disaster and will prove destructive and harmful not only to the Mussulmans but to the British and Hindus also. If the British Government are really in earnest and sincere peace and happiness of the people of this sub-continent, the only course open to us all is to allow the major nations separate homelands by dividing India into "autonomous national states." There is no reason why these states should be ante gonistic to secure to each other. On the other hand the rivalry and the natural desire and efforts on the part of one to dominate the social order and establish political superamacy over the other in the of the country will disappear. It will lead more towards natural good will by international pacts between them, and they can live in complete harmony with their neighbours This will lead further to a friendly settlement all the more easily with regard to Minorities by reciprocal arrangements and adj vestments between Muslim India and Hindu India, which will far more adequately and affectively safeguard tile rights and interests of Muslims and various ether Minorities.

It is extremely difficult to appreciate why our Hindu friends fad! to understand the real nature of Islam and Hinduism. They are not religions in the strict sense of the word, but are. in fact, different and distinct social orders, and it is a dream that the Hindu and Muslims can ever evolve a common nationality and this misconception of one Indian nation lies gone far beyond the limits and is the cause of most of your troubles and will lead India to destruction if we fail to revise our notions in time. The Hindus and Muslims belong to too different religious philosophies, social customs, literatures. They neither inter-marry nor inter-dine together and, indeed, they belong to two different civilizations which are based mainly on conflicting ideas and conceptions. Their concepts on life and of life are deferent.. It is quite clear that Hindus and Mussulmans derive their inspiration from different sources of history. They have different epics, different heroes, and different episodes. Very often the hero of one is a foe of the other and, likewise, their victory and defeats overlap. To yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be so built up for the government of such a state.

Muslims of India cannot accept any Constitution which must necessarily result in a Hindu Majority Government. Hindus and Muslims brought together under a democratic System forced upon the Minorities can only mean Hindu Raj. Democracy of the kind with which tile Congress High Command is enamoured would mean the complete destruction of what is most precious in Islam. We have had ample

experiences of the working of the Provincial Constitutions during the last two and a half years and any repetition of such a Government must lead to civil war and raising of private armies as recommended by Mr. Gandhi to Hindus of Sukhur when he said that they must defend themselves violently or non-violently, blow for blow, and if they could not, they must emigrate.

Mussulmans are not a Minority as it is commonly known and understood. One has only got to look round. Even today, according to the British map of India, 4 out of It Provinces, where the Muslims dominate more or less are functioning notwithstanding the decision of the Hindu Congress High Command to non-cooperate and prepare for civil disobedience. Mussulmans are a nation according to any definition of a nation, and they must have their homelands, their territory and their State. We wish to live in peace and harmony with our neighbours as a free and independent people. We wish our people to develop to the fullest our spiritiual, cultural, economic, social and political life in a way that we think best and in consonance with our own ideals and according to the genius of our people. Honesty demands and the vital interests of millions of our people impose a sacred duty upon us to find an honourable and peaceful solution, which would be just and fair to all. But at the same time we cannot be moved or diverted from our purpose and objective by threats or intimidations. We must be prepared to face all difficulties and consequences, make all the sacrifices that may be required of us to achieve the goal we have set in front of us.

71 Broadcast of Sir Stafford Cripps, Delhi

March 30, 1942

Legal Document No 70

(Extract)

First of all you will want to know what object we had in view. Well, we wanted to make it quite clear and beyond any possibility of doubt or question that the British Government and the British people desire the Indian peoples to have full self-government, with a Constitution as free in every respect as our own in Great Britain or as of any of the great Dominion members of the British Commonwealth of Nations in the words of the Draft Declaration, India would be associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, in ro way subordinate in any aspect of its domestic or external affairs.

The principle on which these proposals are based is that the new Constitution should be framed by the elected representatives of the Indian people themselves. So we propose that immediately hostilities are ended, a constitution-making body should be set up consisting of elected representative from British India and if the Indian States wish, as we hope they will to become part of the new Indian Union, they too will be invited to send their representatives to this constitution-making body, though, if they do, that will not, of itself, bind them to become members of the Union. That is the broard outline of the future.

There are those who claim that India should form a sidle united country: there are others who say it should be divided up into two, three or more separate countries. There are those who claim that provincial autonomy should be very wide with but few centrally controlled federal services; other stress the need for centralization in view of the growing complexity of economic development.

These and many other and various ideas are worthy to be explored and debated, but it is for the Indian peoples, and not for any outside authority, to decide under which of these forms India will in future govern herself.

So we provide the means and the lead by which you can attain that form of the absolute and united self-government that you desire at the earliest possible moment. In the past we have waited for the different Indian communities to come: to a common decision as to how a new Constitution for a self-governing India should be framed and, because there has been no agreement amongst the Indian leaders, the British Government has been accused by some of using this fact to delay the granting of freedom to India. We are now giving the lead that has been asked for and it is in the hands of Indians and Indians only, whether they will accept that lead and so attain their own freedom. If they fail to accept this opportunity the responsibility for the failure must rest faith them.

72 Statement of Maharaja Hari Singh on Cripps Mission

Legal Document No 71

(Extract)

We have yet to know the conclusions at which His His Majesty's Government has unanimously arrived under the combined stress of British India's well-known demands and the requirements of the war situation to satisfy the legitimate aspirations of interests.

On the part of the States, a considerable factor in the Indian policy and an important party to be satisfied, there has been a tendency even within recent weeks to give prominence to the credo of 'Relations to the Crown'. These relations have so far been maintained through and Directed by a Department set up by the will of the Crown, the policy and practice of the Department being determined by the Crown's functionaries. Logically therefore it would seem that the Princes cannot object to hiiving dealings with a Central Government of India which the Crown nay constitute. Nor have they any reason to assume that they would not get a square deal from such a Government.

In any case, it is the duty of the Princes to show themselves the equals of nationals anywhere in the world.

The Princes are justified in assuming that, in a Self-Governing India, every autonomous unit will share equally the -fiscal and financial advantage accusing in such an India as well as the responsibilities and burdens entailed by the maintenance of peace and order and the provision of beneficient service and public utilities in the territories administered. And it should not be forgotten that these territories may have problems peculiar to their populations as well as to their physical conditions. .

In the India of tomorrow, such of the Princes' prerogatives as enable them to afford a better life to their subjects and to ameliorate their lot must remain. Other privileges, which may be merely matters of honour and glory, shedding effulgence on their personalities, are of comparatively small account when set beside other considerations such as the safe-guarding of resources necessary for uptodate Government and the relief of burdens borne by the State alone.

In promising to support the proposals brought by Sir Stafford Cripps, the Chamber of Princes added the proviso that the support should be without prejudice to the right of individual States to lay their case before him and general, without prejudice to the inherent rights of the States. These rights it is not easy to define or catalogue when one considers the effect of the political practice inaugurated in 1860 and since maintained with the aid of 'usage and sufferance'. In any cased there is a piquant irony in the contrast between the Princes' reiteration the phrase-'Treaty Rights' and the Viceroy's suggestion that all Princes, for certain purposes, should voluntarily abdicate in favour of the Political Officers accredited to their courts.

When at the Round Table Conference the Princes assented to the working out of a Federal Constitution, they were prepared voluntarily to delegate some of their sovereign powers to a Federal Government. In the India of the future, it is possible that the matters committed to the Central Government would be far fewer than those recited in the Table of Federal Matters appended to the Act of 1935.

Unless, therefore, the proposals entrusted in Sir Stafford Cripps are fundamentally adverse to the interests of the Indian States and this is unthinkable there is no reason why there" should not be ample common ground between the States and the rest of India.

Freedom must be our watchword...freedom from crippling restrictions and strangling control, freedom front the subordination of India's interests to the interests of other parts of the Commonwealth.

73 Resolution of the Working Committee of the Indian National Congress

April 2, 1942

Legal Document No 72

The people of India have, as a whole, clearly demanded full independence, and Congress has repeatedly declared that no other status except that of independence for the whole of India could be agreed to or could meet the essential requirements of the present situation.

The Committee recognize that future independence may be implicit in the proposals, but the accompanying provisions and restrictions are such that real freedom may well become an illusion.

The complete ignoring of ninety millions of people in the Indian States, and their treatment as commodities at the disposal of their rulers, is a negation both of democracy and selfdetermination. While the representation of an Indian State in the constitution-making body is fixed on a population basis the people of the State have no voice in choosing those representatives, nor are they to be consulted at any stage while decisions vitally affecting them are being taken. Such States may- in many ways become barriers to the growth of Indian freedom, enclaves where foreign authority still prevails, and where the possibility of maintaining foreign-armed forces has been stated to be a likely contingency and a perpetual menace to the freedom of the people of the States as well as of the rest of India.

74 Resolution of the Working Committee of the All India Muslim League

April 2, 1942

Legal Document No 73

The Committee, while expressing their gratification that the possibility of Pakistan is recognized by implication by providing for the establishment of two or more independent Unions in India regret that the proposals of His Majesty's Government embodying the fundamentals are not open to any modification and therefore no alternative proposals are invited. In view of the rigidity of the attitude of His Majesty's Government with regard to fundamentals not being open to any modification, the Committee have no alternative but to say that the proposals hi their present form are unacceptable to them for the following reasons:

The Mussulmans, after 95 years of genuine efforts for the reconciliation of the two major communities and the bitter experience of the failure of such efforts, are convinced that it is neither just nor possible, in the interests of peace and happiness of the two peoples, to compel them to constitute one Indian Union composed of the two principal nations - Hindus and Muslims, but this appears to be the main object of His Majesty's Government as adumbrated in the preamble of the Draft Declaration, the creation of more than one Union being relegated only to the real of remote possibility, and is purely illusory.

In the Draft Declaration a constitution making body has been proposed with the primary object of creating one Indian Union. So far as the Muslim League is concerned, it has finally decided that the only solution of India's constitutional problem is the partition of India into independent zones: and it will therefore be unfair to the Muslims to compel them to enter such a constitution-making body whose main object is the creation of a new Indian Union. With conditions as they are it will be not only futile but on the contrary may exacerbate bitterness and animosity amongst the various elements in the country.

The machinery which has been proposed for the creation of the constitution-making body, namely, that it will consist of members elected by the newly elected Lower Houses of the eleven Provinces upon the cessation of hostilities, as a single electoral college by the system of proportional representation, is a fundamental departure from the right of the Mussulmans hitherto enjoyed by them, to elect their representatives by means of separate electorates, which is the only sure way in which true representatives of the Mussulmans can be chosen.

The constitution-making body will take decisions by a bare majority on all questions of the most vital and paramount character involved in the framing of the Constitution, which is a departure from the fundamental principles of justice and contrary to constitutional practice so far followed in the various countries and Dominions; and the Mussulmans by agreeing to this will, instead of exercising their right and judgement as a constituent factor, be at the entire mercy of the constitution-making body in which they will be a minority of about 25 per cent.

The right of non-accession to the Union as contemplated in the Draft Declaration has been conceded presumably in response to the insistent demands by the Mussulmans for the partition of India; but the method and procedure laid down are such as to negative the professed object; for in the draft proposals the right of non-accession has been given to the existing Provinces which have been formed from time to time for administrative convenience and on no logical basis.The Mussulmans cannot be satisfied by such a Declaration on a vital question affecting their future destiny, and demand a clear and precise pronouncement on the subject. Any attempt to solve the future problem of India by the process of evading the real issue is to court disaster.

With regard to the Indian States, it is the considered opinion of the Committee that it is a matter for them to decide whether to join or not to join or form a Union.

With regard to the treaties to be negotiated between the Crown and the Indian Union or Unions, the proposals do not indicate as to what would happen in case of disaggreement in the terms between the contracting parties; nor is there any provisions made as to what would be the procedure when there is a differences of opinion in negotiating a revision of treaty arrangements with the Indian States in the new situation.

With regard to the interim arrangement there is no definite proposal except the bare statement that His Majesty's Government desire and invite the effective and immediate participation of the leaders of the principal sections of the Indian people in the counsels of their country of the Commonwealth, and of the [United Nations. The Committee are therefore unable to express their opinion until a complete picture is available. Another reason why the Committee unable to express their opinion on the interim arrangements for participation in the counsels of the country is that Sir Stafford Cripps has made it clear that the scheme goes through as a whole or is rejected as a whole and that it would not be possible to retain the part relating to the immediate arrangements at the Centre and discard the rest of the draft scheme: and as the Committee has come to the conclusion that the proposals for the future are unacceptable, it will serve no useful purpose to deal further with the question of the immediate arrangements.

75 Resolution on the 'Unity of India' passed by the All India Congress Committee

April 29-May 2, 1942

Legal Document No 74

The All-India Congress Committee is of opinion that any proposal to disintegrate India by giving liberty to any component state of territorial unit to secede from the Indian Union or Federation will be highly deterimental to the best interests. of the people of the different States and Provinces and the country as a whole and the Congress, therefore, cannot agree to any such proposal.

76 Cripps Mission from the Marquess of Linlithgow to Mr. Amery

May 18, 1942

Legal Document No 75

(Extract)

First of all for a word about the States. I fear that Cripps' comment on the paramountcy issue is of a piece with certain other not very carefully considered statements which he made (so far I can see without any authority from the Cabinet and certainly without consultation with me); and we shall have to regard our hands as free in regard to this, for the issue is one of fundamental importance. I am myself quite unconvinced by Cripps' arguments, but, apart from that, this is not the sort of major issue which can properly be given away by any individual Cabinet Minister, or even by the Cabinet as a whole without a very close investigation. You may be perfect!; certain that you are right in thinking that few, if any, of the Princes, even at the price of escaping from paramountcy, would dream of coming into a union in which their domestic affairs would be subject to control or interference by an Indian Government more particularly an Indian Government to which as you say. 'local agitators in their States" would have pretty easy access.

I am not much impressed either by the suggestion that the States might form a federation or dominion of their own and I doubt if Congress or the Muslim League would take any such proposal too seriously. It is a good debating suggestion but I would not treat it more seriously than that, and the practical difficulties presented by the existence of these minor States and the problem of adjusting relations between a "State Dominion", a Dominion of British India, and such units as might elect, whether in British India or in the States to remain outside either dominion would be not a very easy one.

77 From Maharaja Jam Saheb of Nawanagar to Sir H. Craik

June 1, 1942

Legal Document No 76

(Extract)

The Indian Princes have no desire to raise any controversial issues in the duration of the war and wish to concentrate all thought and energy on ensuring a speedy and decisive victory. Accordingly, as you are aware, it has been my policy as Chancellor to postpone all avoidable matters which have no direct bearing on war effort and which may be inconvenient to meet at this juncture. Nevertheless, certain recent happenings, arising out of the Cripps Mission, have caused, and are bound to accentuate, grave anxiety to the Princes and their loyal subjects, and have occasioned intense feeling of profound disappointment in the States. These developments, I must state in all frankness, have been a particular shock to the Indian Princes who feel special personal attachment to His Majesty the King Emperor, and have full faith in Britain's respect for Treaties and in the bonafides of His Majesty's Government and High Excellency the Crown Representative. I feel confident that it could not have been the intention of His Majesty's Government to create an impression which unfortunately has been created and is being exploited by those who are opposed to war effort and who wish to put a damper even on the unconditional and spontaneous war effort of the States. Accordingly, I deem it my duty to State briefly but in all frankness the more important of these points, so that you may submit them to His Excellency the Crown Representative with the request that he may urge upon His Majesty s Government the necessity of reassuring tile States, unequivocally and without delay, on these points and thereby dispel the misgivings which are apt to do great harm

the Indian Princes regard their Treaties and Eng~gements and the protection guaranteed thereunder as the sheet-anchor of their relationship with the British Crown;

the scrupulous respect for these Treaties and Engagaments has been solemnly assured to the States by Her Majesty the late Queen Empress Victoria, by the Emperors who succeeded her and by successive Viceroys on behalf of His Majesty's Government;

His Excellency the present Viceroy also has, in hispublic addresses as also in private conversations, repeatedly assured us of the scrupulous respect for the Treaties and Engagements which bind the Indian Princes and their loyal subjects to their beloved King Emperor. Moreover, the Indian Princes have been inspired by the fact that His Majesty's Government has gone to war for the High principle of Civilisation which specifically include respect for Treaties and Engagements;

it was, therefore, that the Indian Princes noted with particular satisfaction that the Declaration of August 1940 as elucidated authoritatively in Parliament by the Secretary of State for India was intended specifically to ensure the Crown's Treaty obligations to States. As. such, it has been a great disappointment to the Indian Princes that the new draft Declaration brought by Sir Stafford Cripps which in the words of the Prone Minister, sought to clothe with precision the Declaration of August, l940, omits altogether the reference to Crown's Treaty obligations to States which had been one of the basic planks of all previous Declarations relating to the constitutional advance of India. This inexplicable and unexpected omission, of the Crown's obligations to States, in the Draft Declaration has not unnaturally caused great misgivings in the minds of the Princes and their loyal subjects. In fact it has openly been asked whether the Princes were being ignored as they had no nuisance value; while the Princes themselves feel that their spontaneous and unconditional war effort deserved better than the deletion in the Draft Declaration of the express guarantee of the Crown's obligations to them assured in the Declaration of August 1940;

moreover, it has given occasion to Pandit Jawaharlal Nehru and others to declare publicly with great flutter that these Treaties must be scrapped, and in fact he (Pandit Jawaharlal Nehru) has recently gone to the extent of declaring that those who talk of Treaties with Indian States are "Lunatics, knaves or fools".

He appears to have forgotten the lesson of which was reminded in a published statement by my Secretary that even the "All Parties Report, prescribed over by the late Pandit Moti Lal Nehru (father of Pandit Jawaharlal Nehru) and signed among others by the Rt. Hon'ble Sir Tej Bahadur Sapru specifically recognised that the States' Treaties must be respected in any future constitution of India:

it is significant that the Draft Declaration makes special mention of the protection of "racial and religious minorities and in referring to this point Sir Stafford in his recent statement in the House of Commons stated that: " In view of our pledges, we could not leave the minorities to reply upon this alone. We, therefore, inserted an express clause as to the treaty governing minority protection which will be found in paragraph c (ii) of the Draft Declaration." The States are surely entitled to claim even more minorities that the Solemn undertakings with them must be scrupulously respected, particularly as they hove the honour of alliances and friendship with the British Crown and have consecrated it by their unconditional assistances and cooperation in all crises which faced the Empire:

in this connection, attention may be invited to the provision at the end of clause (c) of the draft Declaration: "Whether or not an Indian State elects to adhere to the constitution it will be necessary to negotiate a revision of its Treaty arrangements so far as this may be required in the new situation." This statement has created the impression that it is proposed to have a compulsory revision of Treaty arrangements whether or not the States concerned consent to such revision. In later elucidation we were told that this provision was intended to apply to economic matters of common concern to British India and the States, but this has not been clearly stated in the Declaration itself. Moreover, even if it be so, it is obvious that the objective in view could be secured by negotiating supplemental Treaties with regard to these economic matters arising out of the new Constitution without affecting or revising the whole of the original Treaties or Engagements. Besides it should be made clear that the execution of these supplement treaties would obviously be subject to free consent of the States concerned;

apart from consideration of Treaty obligations and faith in plighted word which bind the British Crown and the Princes in relationship which is inviolate, and inviolable, the Princes are imbued with genuine and deep loyality to the person of His Majesty the king Emperor. As such, I personally and many others who share my views decline to believe that the Crown wishes to give up its obligations to States or has no further use of them or finds their alliances. their loyal cooperation, services and assistance of no value, or that the Crown is advised that it will not be in a position effectively to discharge its obligations towards States;

nevertheless some of these recent utterances have caused grave concern and personal shock to many of us, and it is fell that if matters are left as they are in the present position, they are bound; to have serious repercussions on the younger and future generations of Princes, a consequence which must be deplored in the interests of the British Commonwealth of Nations as much as in the interest of India and the States. Moreover, the situation is already being exploited by some of the British Indian Political Parties who are hostile to the British connection; in view of the aforesaid consideration, I would urge with all the emphasis at my command that the earliest opportunity may be utilised to ensure the States through an authoritative statement on behalf of His Majesty's Government, that the British Government stands true to, and firmly by, its Treaty obligations to the States and will continue to protect them according to these solemn obligations.

Let me also refer briefly to a few other factors which have contributed to the aforesaid anxiety of the Princes, I am citing them in the confident hope that the view point of the Princes will be kept in view if and when similar circumstances recur again;

certain important matters relating to Defence were discussed in connection with the Cripps Mission, and representatives of the Congress and Muslim League were brought in consultation with His Excellency the Commander-in-Chief to evolve proposals connected with the appointment of an Indian Defence Member. You will appreciate, that both under their Treaties, and otherwise the States are vitally concerned in this matter, and yet in these negotiations the States have entirely been ignored;

various important references, made in connection with the Cripps Mission both in India and in the House of Commons, have been confined to British India and Indian leaders as if the Indian States did not matter. So much so, that it was stated that representatives of certain parties, and communities, which were specifically mentioned, had expressed their readiness to stand by Great Britain in tile defence of their country. No reference to the spontaneous and unconditional support off the Indian Princes and their loyal subjects was made in this authoritative statement by the Lord Privy Seal;

throughout the R.T.C. and previous constitutional discussions, the Rulers and their Ministers were treated by His Majesty's Government and their representatives as they should be treated as the sole accredited representatives of the States. This time however, presumably through the efforts of Pandit Jawarharlal Nehru and others, Sir Stafford Cripps received a British Indian as representative of the so-called State Subjects Conference, which is an adjunct of the Congress and generally speaking is a self-assumed tribune of the very small minority of disgruntled elements in the Indian States. We do not know whether this step was taken with the concurrence of His Majesty's Government, but at any rate it has placed the Princes in a very- awkward position vis-a-vis their loyal subjects. In this connection, it may be pointed out that even the All Parties Report of 1928 to which reference has been made in sub-pare (e) of Para I above recognised "that the Rulers of the Indian States alone represent their governments,"

it seems authoritatively indicated that once a State adheres to the proposed Indian Union it will have to remain there even if the Union should declare itself a Republic, or decides to break away from the British Empire, or decrees that monarchical rule in tile States should be replaced by Republics

we have been told that the proposed constitution making body would be free to discuss internal affairs of the States, though on previous occasions it was clearly understood that constitutional discussions wilt be limited to matters of common concern to British India and the States which appertain to the Centre. In this connection, let me invite intention to the resoultion passed unanimously at the last session of the chamber of Princes and the relevent extracts from my speech in moving the aforesaid Resolution which would show that the Indian Princes arc sympathetic to, and are prepared to make every reasonable contribution for the constitutional advance of It dia. They desire. however, that they should be kept free from purely British Indian controversies and that British India should not interfere with the internal affairs of the States;

during the Cripps Negotiations reference has been made to only a representative of India on the Imperial War Cabinet, and the names of certain British Indian leaders were openly canvassed for it. In this connection, it may be pointed out that in the Imperial War Cabinet and Conference of 1917 as also at the Peace Conference of 1919, both Indian States and British India were separately represented.

IV. It is appreciated that in the interests of India and the Empire as a whole, a single Union would undoubtedly be the best solution of India's constitutional problem; at the same time, it may be that unforeseen circumstances may compel a large number of States or groups of States not to adhere to the new Union. Accordingly, the States Delegation asked Sir Stafford Cripps that in that contingency, the non-adhering States should be accorded the option of having a union of their own with full sovereign status in accordance with a suitable and agreed procedure devised for the purpose. It was pointed out that provision to that effect had been made for non-adhering Provinces. We were told that this eventuality had not been considered in connection with the Draft Declaration. This shows that apart (far ?) from receiving treatment better than the Provinces to which the States are entitled on constitutional and historic grounds, they were not being treated even on par with the Provinces in respect of future constitutional developments.

78 Cripps Mission

Letter from the Secretary to the Crown Representative to the India Office

June 25, 1942

Legal Document No 77

His Highness's letter is carefully documented and it will be seen that it is signed by him in Lois capacity as Chancellor of the Chamber of Princes and is described in the final sentence as an official letter. It concludes with a specific request that "an authoritative and early announcement" should be made by His Majesty s Government in order "to eliminate the Princes" serious concern and misgivings on these matters.

His Excellency the Crown Representative has little doubt that such concern and misgivings are in fact genuinely entertained by the great majority of Indian Princes, particularly by the more conservative among then1, and is not inclined to attach any great importance to such public declarations in the opposite sense as have been made by their Highnesses of Kashmir and Indore. The Princes may to some extent derive comfort and re-assurance from the generous terms in which His Majesty has referred in his message to India published on the 13th June 194n to "their traditions of loyalty and attachment to his Throne" and to their unstinting offers of men and money and personal services for the war. But they are not likely to be reassured by a reference to the fact that Sir Stafford Cripps' offer was in terms withdrawn when the negotiations broke down. The Princes probably feel that should negotiations be resumed in the event of the great political parties in British India showing a more responsive attitude, the Cripps declaration would certainly from the starting point of such negotiations and would be regarded as the minimum measure of concession and advance open to discussion.

In particular, preplexity is expressed in pare II (a) of the Chancellor's letter with regard to the statement made by the Lord Privy Seal in the house of commons to the effect that he was "certain that this House would wish the British Administration in India to do all it can to encourage and expedite the development of suitable representative institutions in all Indian States." It is impossible to reconcile this statement with the earlier declaration of policy of His Majesty's Government made m the form of replies to questions asked in Parliament in 1938, and referred to in His Excellency the Crown Representatives address to the Chamber of Princes in 1939. On the first occasion, on n I st February 1938, the Under Secretary of State replied that "It is not the policy of the Paramount Power in ordinary circumstances to intervene ii, the internal administration of full powered States." This was confirmed on the 16th December of the same year when the reply given to Sir John Wardlaw-Milne was that "His Majesty's Government have no intention of bringing any form of pressure to bear upon Rulers to initiate constitutional changes. It rests with the Rulers themselves to decide what form of Government they should adopt in the diverse conditions of Indian States".

There thus exists a direct discrepancy in a matter of cardinal importance, which, in His Excellency's opinion, requires elucidation at the earliest possible opportunity, since, if the view expressed by the Lord Privy Seal is to be interpreted as the considered view of His Majesty's Government as now constituted, our existing policy in regard to constitutional reforms in States stands in need of radical revision.

I am also to invite particular attention to paragraph III (d) of the Chancellor's letter which contains a brief and surprisingly restrained reference to what is perhaps the most legitimate of all the objections which the Princes could raise to the draft declaration, namely, that by acceding to the new Union they would be committed to a possible...perhaps even probable severance of their cherished relations with the British Crown. His Highness has not mentioned the obvious remedy, i. e. that in joining the, Union, the States should be allowed to reserve the right to secede from it if at any time the Union were to decide to leave the British Commonwealth of Nations. His Excellency believes that, in the absence of such a provision, few if any, of the great States would join the Union.

In conclusion I am to make it clear that His Excellency is strongly of opinion that so fully documented a communication, emanating from such a source and couched in terms of genuiine apprehension clearly calls for a definite answer, the nature of which can only be determined by His Majesty's Government.

79 Cripps Mission

Request by Chamber of Princes for Statement of Policy by his Majesty Government Memorandum by the Secretary of State for India

September 4, 1942

Legal Document No 78

The Chancellor of the Chamber of Princes (the Jam Saheb of Nawanagar) is very shortly arriving in this country and will almost certainly ventilate this matter while he is here. It is very desirable to be in a position, whenever he refers to the matter (which he may take an early opportunity of doing), to say that the Crown Representative is already composing his reply on lines which can be indicated broadly to him as set out in this paper. Unless, therefore, any of my colleagues wish the matter to be discussed in Cabinet, I propose to despatch the draft telegram to the Crown Representative not later than the 8th September.

2. The Chancellor, in his letter of the 1st June to the Viceroy's Political Adviser, complains:

of the failure of the Draft Declaration of March 1942 to inclued an assurance that the British Government stands by its treaty obligations to the States, and of the apparent intention to impose treaties on the rulers;

of the Lord Privy Seal's remarks in the House of Commons on the 28th April (Hansard, Cols. 834 and 835), which the Chancellor interprets as meaning that the Paramount Power intends to impose democratic institutions on the States;

of various smaller grievances in connection with the "Cripps Negotiations," which, on the whole, need not concern the war Cabinet (except for the complaint that, by joining an Indian Union, they might involve themselves in succession from the Empire);

of the absence of recognition of the right of non-adhering States-like non-adhering Provinces - to form a separate Union of their own.

3. In the view of the Viceroy and his advisers the Princes feel genuinely that their interests were insufficiently considered both in the Draft Declaration and in the discussions arising from it. The Viceroy accordingly suggests that a considered reply, "the nature of which can only be determined by His Majesty's Government," should be sent. I have accordingly agreed with the Viceroy on the following line of reply:

the absence from the Draft Declaration of a special reference to the State's treaty rights is of no significance; the Prime Minister's statement of the 11th March made quite clear that the fulfilment of treaty obligations to the States remains an integral part of His Majesty's Government's policy. Moreover, these treaties will only be altered by negotiation and agreement;

The Lord Privy Seal said that the House would wish the British administration in India "to do all it can to encourage and expedite the development of suitable representative institutions in All Indian States." This does not necessarily mean the imposition of democracy (which in any case might be quite unsuitable). It mean that the Paramount Power will continue, as at present, to urge upon Rulers the establishment of institutions for representing the views and grievances of their subjects with a view to their being remedied (viz. administrative reforms) constitutional changes (which might involve restriction on the Ruler's powers) may or may not be a sequel, but that is for the Rulers themselves to decide; no pressure to introduce such changes will be applied by the Paramount Power on the Ruler, as it is in the case of administrative reform. (This conforms with what has been said here in Parliament as recently as 1938 and with the Viceroy's own pronouncements on the subject in India. The argument, though somewhat sophisticated is at any rate consistent with our declared policy in a matter on which the Princes are very sensitive).

replies on the minor points need not concern us (the succession point is covered under IV);

between now and the next Indian constitutional diccussions the Princes may certainly consider the outline of a scheme for a separate Union, if they wish. They might also consider what terms they might wish to demand of an Indian Union before they Join it, e.g. the right to secede from the Union if tile Union secedes from the Empire. Consideration of these points could certainly not be excluded from future discussions.

(In actual fact) the Viceroy hopes-- and proposes thank we suggest privately to the Princes that - the idea of age separate States Union might be used by them merely as a bargaining counter to secure better terms for accession to an Indian Union, and not as a serious objective. This seems sound).

The question arises whether a reply on these lines should be published. The Victroy assumes it will; my view is that it should not, since it is in effect an explanation of why we consider that there should be no new declaration of policy towards the States at this stage. If the reply aces not have the effect of satisfying the Princes, and if the Jam Saheb presses the matters strongly, it might conceivably be necessary to make some statement in parliament, but I am anxious to avoid it since there is little we can say and it might make matters worse for them by stimulating criticism in other quarters.

Finally, the Viceroy and I remain agreed that we should press on as vigorously as possible with measure (such as internal organisation, pooling of judicial and police services between co-operative groups of States, absorption where possible of the administration of smaller by that of larger States & c.) towards making the lesser States more fit for survival in the modern world. The Viceroy hankers a little after a public pronouncement reaffirming the Crown's existing obligations to protect the States, linked with a warning that we interpret this only to mean protection of such States as are fit to survive. I am against any more pronouncements, and particularly against a qualification of the treaty obligations. It is because internal reforms are in the State's own interests that I think we should continue to urge the Rulers to adopt them.

The course of action I propose to authorities is therefore:

the issue in India, on behalf of the Viceroy to the Chancellor of the Chamber of Princes, of a reply on the lines laid down in paragraph 4, indicating no change n our policy towards the States.

this reply to be expressly limited to confidential circulation among the Princes (hints of its contents may no doubt leak out in due course, but it will not be in any sense a formal declaration);

the avoidance of any new formal declaration about the sanctity of the Princes treaties at this stage, even though it is possible that we might have to make some reference to the subject in an Indian debate (even this however I should prefer to avoid);

the continuance and intensification, so far as this can be done without alienating the more important Ruler's of our present policy of bringing the States into line with modern administrative standard).

80 Resolution of the Indian States Delegation

1942

Legal Document No 79

The Indian States delegation unanimously adopted the following resolution in respect of the proposals of his Majesty Government.

that this chamber welcomes the announcement made in the House of Commons on March 11th 1942, by the Prime Minister and the forthcoming visit to India of the Lord Privy Seal and leader of the House of Commons, and expresses a hope that it may help to unite India, to intensify further her war efforts and to strengthen the measures for defence of the Motherland;

that this chamber has repeatedly made it clear that any scheme to be acceptable to the States must effectively protect their rights arising from treaties, engagements and sanads or otherwise and ensure the future existence of sovereignty and autonomy of the States thereunder guaranteed, and leave them complete freedom duty to discharge their obligation to the crown and to their subjects: it therefore, notes with particular satisfaction the reference in the announcements of the Prime Minister to the fulfillment of the treaty obligations to the Indian States;

That this chamber authorises its representatives to carry on the discussions and negotiations for constitutional advance of India with due regard to successful prosecution of war and interests of the States, and subject to the final confirmation by the Chamber and without prejudice the right of the individual States to be consulted in respect of any proposals affecting their treaty or other inherent rights.

81 Cripps Mission

Maharaja Jam Saheb of Nawanagar to Sir S. Cripps

September 10, 1942

Legal Document No 80

(Extract)

The Indian States Delegation unanimously adopted the following resolution in respect of the proposals of His Majesty's Government which you discussed with them:

"The attitude of the Indian States in general on the mission of the Lord Privy Seal is summed up in the resolution on the subject which was adopted unanimously at the recent Session of the Chamber of Princes. The Indian States will be glad as always, in their contribution, in every reasonable manner compatible with the soveregnity and integrity of the States towards the framing of a new Constitution for India.

The States should be assured, however, that in the event of a number of States not finding it feasible to adhere, the non-adhering States or groups of States, so desiring would have the right to form a Union of their own with full sovereign status in accordance with a suitable and agreed procedure devised for the purpose."

RESOLUTION

that the Chamber welcomes the Annoncement made in the House of Common on the 11th March, 1942 by the Prime Minister and the forthcoming visit to India of the Lord Privy Seal and leader of the House of Commons, and expresses the hope that it may help to unite India to intensify further her war effort and to strengthen measures for the defence of the Motherland.

that this Chamber has repeatedly made it clear that any scheme to be acceptable to the States must effectively protect their right arising from Treaties, Engagements and Sanads or otherwise and ensure the future existence, sovereignty and autonomy of the States thereunder guaranteed, the leave them complete freedom duly to discharge their obligations to the Crown and to their subjects it therefore notes with particular satisfaction in reference in the Announcement of the Prime Minister to the fulfillment of the Treaty obligations to the Indian States.

that this Chamber authorises its representatives for the constitutional advance of India with due regard to the successful prosecution of war and the interests of the States, and subject to final confirmation by the Chamber and without prejudice to the right of the Individual States to be consulted in respect of any proposals affecting their Treaty or other inherent rights.

82 Naya Kashmir

Legal Document No 81

(Extract)

THE CONSTITUTION OF THE STATE

Citizenship: Its Basic Rights and Obligations,

A single State Citizenship is hereby established for all citizens of Jammu, Kashmir, Ladakh and the Frontier Regions, including the Poonch and Chinani illaqas. The equality of the rights of all citizens, irrespective of their nationality, religion, race, or birth, in all spheres of national life-economic, political, cultural, and social shall...be an irrevocable law. Any direct or indirect restriction of these rights, or conversely the establishment of direct or indirect privileges for any citizens or class of citizens on account of nationality, religion, race or birth, as well as the propagation of national, racial or religious exceptionaliszn or hatred and contempt shall - be punished by law.

Freedom of conscience and of worship shall be guaranteed for all citizens.

In conformity with the interests of the people, for the purpose of promoting political awakening and strengthening the national resurgence, all Citizens shall be guaranteed by law:

Freedom of speech
Freedom of the Press
Freedom of Assembly and Meetings
Freedom of Street Processions and Demonstrations

In conformity with the interests of the people and for the purpose of developing self-expression through the organisation and political activity of the masses of the people, all Citizens shall be ensured the right of combining in public organizations: trade unions, co-operative societies, moments and youth organizations, sport and self-defence organizations poetical parties and cultural, scientific and technical societies.

Inviolability of the person shall be ensured to all Citizens. No Citizen may be arrested or detained except by decision of a Court of Law, or by the sanction of the Advocate General of State.

The privacy of the homes and secrecy of correspondence of Citizens shall not be violated except in accordance with Law.

The defence of the Motherland is the supreme and sacred duty of all Citizens. Treason to the Motherland violation of oath, desertion to enemies of the Motherland, impairing the military power of the State, espionage shall be punishable wit! the full severity of the Law as the gravest crime in pursuance of this sacred task every Citizen is obliged to tram himself to use and shall be ensured the right to bear arms. Universal compulsory military service shall be established by law.

All Citizens have the right to work, that is, the right to receive guarantee work with payment for their labour in accordance with its quantity and equality subject to a basic minimum and maximum wage established by law. In the absence of the provision of employment, Citizens are entitled to security of the necessaries of decent existence for themselves and their families by universal social insurance. The right to work shall be ensured by the planning of national economy, by the advance of industrialization of the country, by the steady growth of productive forces, and the simultaneous raising of the standard of life of the people whereby economic crisis and unemployment shall be eliminated.

All Citizens shall have the right to rest. This right shall be ensured by the reduction of the working day to eight hours maximum, the establishment of annual vacations with pay for workers and employees and the provision of a wide net work of sanitariums, rest homes and clubs for the accommodation of working people.

All Citizens shall have the right to material security in old age as well as in the event of sickness and loss of capacity to w ork. The right shall be ensured by the wide development of social insurance of workers

and employees at the expense of the State, free medical aid for workers and the provision of wide network of health resorts for the use of working men and women.

All Citizens shall have the right to education. This right shall be ensured by universal compulsory elementary education, free of charge. In addition a wide system of States scholarships shall be provided for poor students in the higher schools and universities. The mother-tongue shall be the medium of instruction. Free vocational technical and agronomic education shall be organized for adult workers in the fields and factories.

Women citizens shall be accorded equal rights with men in all fields of national life: economic, cultural, political, and in the state services. These rights shall be realized by affording women the right to work in every employment upon equal terms and for equal wanes with men. Women shall be ensured rest, social insurance and education equally with men. The law shall give special protection to the interests of mother and child. The provision of pregnancy leave with pay and the establishment of a wide network of maternity homes, nurseries and kinder gardens shall further secure these rights.

All children born in the State shall ensured equality of opportunity irrespective of accidents of birth and parentage. The State shall watch and protect our children as the greatest wealth the world possesses. In all questions of administration or legislation, medical, educational, domestic, municipal or industrial, the interests of the child shall be the paramount consideration.

All Citizens shall be secured protection by the laws and recourse to the courts through an administration of justice which shall be quick, cheap and impartial. This right shall be ensured by the elective character and the independence of the judiciary; by the independence of the office of the Advocate General and State Advocates; by the provisions of People's Courts and Tehsil Courts to decide the majority of cases locally; by the use of the local language in Court proceedings; by the certainty, and codification of laws; by the equality of all Citizens before the law.

The right of personal property of Citizens, as well as the right of inheritance of personal property of Citizens, is protected by law within the limits of the planned economy of the State. No person shall own immovable property in the State who does not fulfill a productive role inside the State in accordance with the National Economic Plan. This shall not operate to divest a pensioner or infirm person property legitimately acquired by him during his working life.

Work in the State of Jammu and Kashmir shall be an obligation and a matter of honour to all citizens capable of work.

The State of Jammu and Kashmir grants the right of asylum to foreign citizens persecuted for defending the interests of the masses, for their scientific activity, or for their struggle for national liberation.

Every citizen of the State is obliged to observe the Constitution of the State, to carry out the laws, to observe labour discipline, to honestly fulfill social duties, and to respect the rules of the community.

THE NATIONAL ASSEMBLY

The highest legislature of the State, the National Assembly, is elected by Citizens of the State by electoral districts on the basis of one deputy per 40,000 population, for a period of five years. The National Assembly shall elect its own Speaker and Officers and shall determine its own procedure. A law shall be considered adopted by the National Assembly if approved by a simple majority vote and if it receives the Ruler's assent. Laws adopted by the National Assembly shall be published in the Urdu language, as well as the language of the nationalities of the State over the signatures of the Ruler and the Speaker of the Assembly. The National Assembly elects a Credentials' Commission which verifies the credentials of Deputies of the Assembly.

A Deputy of the National Assembly shall not be prosecuted or arrested without the consent of the National Assembly, and in the period when the National Assembly is not in session, without the consent of the Speaker of the National Assembly. In no case shall imprisonment or constraint operate to prevent a deputy from participating in the deliberations and decisions of the National Assembly, save by a decision of the National Assembly taken after the Deputy has been afforded the opportunity to speak in his

defence. The Speaker shall be empowered to issue summons to any person having the detention or custody of a Deputy to produce him in order that he may attend a session of the National Assembly.

The National Assembly appoints when it thinks fit, investigating and auditing commissions upon any question. All institutions and officials are obliged to comply with the demands of such Commissions and to supply them with the necessary materials and documents.

After the elections, the Ruler shall convene the newlyelected National Assembly within a period of one month. When the term of the National Assembly expires, or in the event of its dissolution before the expiration of its term, the Ruler shall fix new elections within a period of not more than two months from the date of the expiration of its authority or of the dissolution, the case may be.

Subject to the general control of H.H. the Maharaja Bahadur the jurisdiction of the National Assembly shall include:

representation of the State in exterior relations, conclusion and ratification of treaties with other States;

approval of alterations of the boundaries of the States;

organization of the Defence of the State and the direction of its armed forces;

foreign trade upon the basis of State monopoly;

protection of State security;

establishment of tile National Economic Plan of the State;

approval of the State Budget;

administration of banks, industrial and agricultural establishments and enterprises as well as trading enterprises;

regulation of currency and the direction of the monetary credit system;

administration of transport and means of communication;

organization of State insurance;

contracting and granting loans;

establishment of the fundamental principles for the use of land as well as the exploitation of deposits, forests and waters;

establishment of the fundamental principles in the field of education and protection of public life;

organization of a unified system of national economic accounting:

establishment of the principles of labour laws;

laws on tile citizenship of the State and the rights of foreigners;

legislation on legal procedure, court establishments, criminal and civil codes;

organization and control of the radio broadcasting system;

legislation for the protection and development of nationalities;

organization for an archaeological survey; legislation for the protection and rehabilitation of monuments;

legislation in furtherance of this constitution, upon all aspects of national life.

THE COUNCIL OF MINISTERS OF THE STATE

The Council of Ministers of the State is responsible to the National Assembly.

Ministers of the State direct the branches of the State administration which come within the jurisdiction of the National Assembly. Ministers of the State issue within the jurisdiction of their respective departments orders and instructions on the basis and in fulfillment of existing laws, as well as of decisions and orders of the Council of Ministers, and verify their execution.

Ministers of the States all divide among themselves the following branches of administration.

Defence - Agriculture & Animal Husbandry
Foreign Affairs - State Grain and Livestock Farms

Foreign Trade - Finance and Banking
Railways - Home Trade
Communications - Home Affairs
Water Transport - Justice
Heavy Industry - Health
Defence Industry - Education
Food Industry - Local Industry (Including cottage Industries)
Light Industry - Municipal Economy
Timber Industry - Social Welfare

THE RULER OF JAMMU AND KASHMIR

27. The ruler of Jammu and Kashmir shall:

convene sessions of tile National Assembly twice a year; shall convene extraordinary sessions of the Assembly at his own wish or at the request of the speaker of the Assembly; and

dissolve the National Assembly and fix new elections;

conduct a referendum upon his own initiative or upon the demand of the majority of the legislators;

declare general or partial mobilization;

ratify international treaties after they have been approved by the National Assembly.

summon the leader of the largest single party in the National Assembly to form the Ministry.

ELECTORAL SYSTEM.

Deputies to the National Assembly as well as to the Peoples' Panchayats are selected by the electors upon the basis of universal equal direct suffrage by secret ballot. Franchise shall be universal: all Citizens of the State who have reached the age of eighteen years, irrespective of race and sex, nationality or religion, educational qualifications, residential qualifications, social origin, property, status, or past activity shall have the right to participate in the elections of deputies and to be elected with the exception of insane persons and those deprived of electoral rights by court sentence. Franchise shall be equal: every Citizen takes part in elections upon an equal basis. Every Citizen shall have one vote, provided that, during the transitional period, Sikhs, Kashmiri Pandits and Harijans shall be provided with two reserved seats each, and for this purpose they shall exercise the right of a second vote. Women shall have the right to elect and to be elected upon equal terms with men in all institutions of the State.

Citizens serving in the armed forces shall have the right to elect and be elected on equal terms with all citizens.

Candidates shall be put forward for election according to electoral districts. Any one hundred electors residing in an electoral district may sponsor a candidate. No other precondition, whether money security or otherwise, shall be required of a candidate.

Every deputy is obliged to render from time to time a report to his constituency regarding his work and the work of the body to which he was elected; he may at any time be recalled by his constituency in the manner established by law.

Polling stations shall be provided in all electoral districts within convenient walking distance. Polling stations shall be provided for all factories employing more than 100 workers.

JUSTICE: THE COURTS AND THE ADVOCATE GENERAL

Justice is administered by the High Court of Jammu and Kashmir, and by the District and Tehsil People's Courts.

In all courts, cases shall be tried with the participation of the people's Judges with the exception of cases specially provided for by law.

The High Court of Jammu and Kashmir is the highest judicial tribunal. It is charged with the supervision and direction of the judicial activity of all organs of the State.

The High Court of Jammu and Kashmir is elected by the National Assembly for a period of five years. The lower courts are appointed by the High Court for a period of five years, with the exception of the People's Courts which are elected by the People's Panchayats for a period of five years.

Court proceedings in the High Court shall be conducted in the lingua franca of the State, that is Urdu. Proceedings in the lover courts shall be conducted in the local language. Persons not knowing the language of the Court shall be assured the possibility of fully acquainting themselves with the material of the case through an interpreter, as well as having the right to address the Court in their own language.

In all cases an accused person is fully ensured the right of defence.

In all courts of the State cases are heard openly, except when otherwise provided for by law.

Judges shall be independent and subject only to law.

THE ADVOCATE GENERAL AND STATE ADVOCATES

The Advocate General of Jammu and Kashmir is appointed by the National Assembly for a period of five years. State Advocates in Districts and Tehsilare appointed by the Advocate-General of Jammu and Kashmir for a period of five ears.

The Advocate-General of Jammu and Kasl1mh- is charged with the highest supervision of the strict observance of the laws by all State Ministers and institutions under them, as well as by individual persons holding official posts and also by citizens of the State.

The Advocate-General and the State Advocates perform their functions independently of any local organs whatsoever, the latter being subordinate only to the Advocate General of the State.

In case of the retirement of ~ Judge or the AdvocateGeneral falling at a time when the National Assembly is in a State of dissolution, the date of retirement shall be deemed postponed until the meeting of the fresh National Assembly is able to make a new appointment.

LOCAL ADMINISTRATION

The organs of State power in District of the Tehsils, Cities and Villages, shall be the People's Panchayats. The People's Panchayats direct the activities of the organs of administration subordinate to them, ensure the maintenance of State order observance of laws and the protection of the rights of citizens, direct local, economic and cultural development in fulfilment of the National Plan, organise Civil Defence, and draw up the local budget. The People's Panchayats adopt decisions and issue orders within the limits of the powers vested in them by law. The executive and administrative organs of the People's Panchayats are the Executive Committees elected by them, composed of a Chairman, Vice Chairman, Secretary and Members.

The Executive Committee of the People's Panchayats are directly responsible to the People's Panchayats which elected them and are also subject to the Council of Ministers of the States.

The People's Panchayats are elected by the people of their area of jurisdiction for a pericd of five years. The ratio of representation in the people's Panchayats shall be determined by law.

NATIONAL LANGUAGES

48. The national languages of the State shall be Kashmiri, Dogri, Balti (Pall), Dardi, Punjabi, Hindi and Urdu shall be the lingua franca of the State. The State shall foster and encourage the growth and development of these languages, especially those which are more backward, by every possible means, including the following:

1. The establishment of a State Languages Academy, where scholars and grammarians shall work to develop the languages?

by perfecting and providing scripts;

by enriching them through foreign translations;

by studying their history;

by producting dictionaries and texts books.

The founding of State scholarship for the study of these languages.

The fostering of local Press and publication in local languages.

AMENDMENTS TO THE CONSTITUTION

Amendments to this Constitution shall be effected only by a decision of the National Assembly when adopted by the majority of not less than two-thirds of the votes cast therein subject to the ratification of the Ruler.

NATIONAL ECONOMIC PLAN

50. The economic life of the State shall be determined and directed by the National Economic Plan for the purpose of increasing public wealth, of ensuring a steady rise in the material and cultural level of working men and women, and consoLdating the defence capacity of the State.

83 Jinnah's Address to Muslims of Jammu and Kashmir

Legal Document No 82

(Extract)

As I said at the moment I reached Jammu, it is not the policy of the Muslim League to interfere with the internal administration of this State or the grave and serious issues that face the Maharaja and his Government, as between him and his people, but we are certainly very deeply concerned with the welfare of the Mussalmans in the State, and I must say that even a casual visitor cannot but be shocked to see the condition of the people in this State, even in matters of their elementary needs and necessities. Sir B.N. Rao has just taken charge as the Prime Minister of the State, and now the people are looking up to him and expecting that he will take effective measures for their betterment.

As regards the Mussalmans, as I said, we are vitally concerned with their welfare, but I regret that although Sheikh Abdullah and his party and the Muslim Conference discussed matters with me in Delhi and in Lahore before my arrival here and were good enough to accord me a great reception, and were anxious that I should hear both sides and bring about a settlement, when I, after careful consideration, suggested that the Mussalmans should organize themselves under one flag and on one platform, not only my advice was not acceptable to Sheikh Abdullah but, as is his habit, which has become a second nature with him, he indulged in all sorts of language of a most offensive and vituperative character in attacking me. My advice to the Mussalmans is that the differences can only be resolved by argument, discussion, exchange of views, and reason and not by goondaism and one thing that I must draw the attention of Kashmir Government about is that goondaism must be put down at any cost, and there should be constitutional liberty of speech and freedom of thought, which is the elementary right of every citizen under any civilized form of Government.

84 Resolution of the Working Committee of the Indian National Congress

On United India and Self-Determination

September 12-18 and 21-24, 1945

Legal Document No 83

As some misapprehensions have arisen in regard to certain resolutions of the All-India Congress Committee and of the Working Committee passed in 1942 relating to the future Constitution of India, the Working Committee restates the position as follows:

In accordance with the August 1942 resolution of the All India National Congress Committee it will be for a democratically elected Constituent Assembly to prepare a Constitution for the Government of India, acceptable to all sections of the people. This Constitution, according to the Congress view, should be a federal one, with the residuary powers vesting in the units. The fundamental rights as laid down by the Karachi Congress and subsequently added to, must form an integral part of this Constitution. Further, as declared by the All-India Congress Committee at its meeting held in Allahabad in May 1942, the Congress cannot agree to any proposal to disintegrate India by giving liberty to any component State or territorial Unit to secede from the Indian Union or Federation. The Congress, as the Working Committee declared in April 1942, has been wedded to Indian freedom and unity and any break in that unity, especially in the modern world when people's minds inevitably think in terms of ever larger federations, should be injurious to all concerned and exceedingly painful to contemplate. Nevertheless, the Committee also declared, it can not think in terms of compelling the people in any territorial unit to remain in an Indian Union against their declared and established will. While recognizing this principle, every effort should be made to create conditions which would help the different Units in developing a common and co-operative national life. The acceptance of the principle inevitably involves that no changes should be made which result in fresh problems being created and compulsion being exercised on other substantial groups within that area. Each territorial Unit should have the fullest possible autonomy within the Union, consistently with a strong national state.

85 Resolution of the Working Committee of the National Conference

February 10, 1946

Legal Document No 84

The working Committee of the Jammu and Kashmir National Conference have taken into consideration the speech made by the Vicerory of India in the Princes' Chamber on the17th January, 1946 along with the declaration made by the Chancellor of the Chamber on behalf of the Princes regarding: constitutional advancement in the States. After fully examining the salient points in both the speeches, the Working Committee have come to the following conclusions:

1. That the advice tendered by the Crown Representative to the Princes regarding the steps to be taken in making tl1e administration of these States progressive did not amount to anything progressive. In fact it lost all its significance when he (Viceroy), made such progress conditional on the maintenance of the treaties and the consent of the Princes. These treaties and engagements which are outdated, reactionary and questionable have always stood and will always stand in the way of the States People's progress and to think that the Rulers will give. up their privileged positions that they enjoy under them at their sweet will is nothing but wishful thinking. The National Conference has at several occasions made it clear that these treaties have been made in times and under circumstances, which do not obtain now and have been framed without seeking the consent of the States people. Under such circumstances no treaties or engagements which act as a dividing wall between their progress and that of their brethren in British India, can be binding on the people.

86 Telegram from Sheikh Mohammad Abdullah to Cabinet Mission

1946

Legal Document No 85

"**As** President. All Jammu and Kashmir National Conference representing all communities and classes of people in-habiting Jammu and Kashmir State I welcome your visit to our state and hope that it will usher in new era of freedom both political and economic for four million state people. As Mission is at moment reviewing relationship of Princes with the Paramount Power with reference to treaty rights we wish to submit that for us in Kashmir re-examination of this relationship is vital matter because hundred years ago in 1846 land and people of Kashmir were sold away to servitude of Dogra House by British for seventy-five lacs of Sikh rupees equivalent to fifty lakhs British Indian rupees. Then Governor of Kashmir resisted transfer, but was finally reduced to subjection with aid of British. Thus sale deed of 1846 misnamed treaty of Amritsar sealed fate of Kashmir rr.asses. We declare to world that this sale deed confers no privileges equivalent to those claimed by states governed by treaty rights. As such case of Kashmir stands on unique footing and people of Kashmir press on Mission their unchallengeable claims to freedom on withdrawal of British power from India. We wish to declare that no sale deed however sacrosanct can condemn more than four million men and women to servitude of an autocrat when will to live under this rule is no longer there. People of Kashmir are determined to mould their own destiny and we appeal to Mission to recognise justice and strength of our cause."

87 Dyarchy Appointment of Popular Ministers

Legal Document No 86

"**With** a view to giving further effect to my policy of associating my subjects with the administration of the State, I have after careful consideration decided to call upon the Praja Sabha to nominate panel of six (three to be Muslims) of its members, three from Jammu (including the Frontier Districts). Out of the panel so nominated I shall appoint two (one of whom will be a Muslim) as my Ministers. These Ministers shall hold charge of portfolios to be determined by me and will hold office during my pleasure."

88 Dyarchy Mirza Beg to Rai Bahadur Ramchander Kak, Prime Minister, Jammu

Letter No. 11-P/46/D.O.

15.1.46

Legal Document No 87

My dear Prime Minister,

Ever since assumption of office, I have been facing certain tremendous difficulties, in the discharge of my duties which from time to time I have brought to your notice and also to the notice of your predecessor, both in writing and verbally. These difficulties are to my mind in their nature serious enough to call for immediate solution, not only with a view to afford opportunities of efficient working but also to achieve the object underlying His Highness' October Proclamation of 1944, in pursuance of which the two popular Ministers were appointed. But as ill-luck would have it, they have not only been not removed so far but in most cases no serious attempt has to my knowledge, been made uptill now towards their solution. The result is obvious.

Under these circumstances I feel constrained once more to re-state them here and strongly request the immediate solution and removal of these difficulties:

1. You remember that just before the commencement of the Srinagar session of the Praja Sabha, I, in the course of a discussion pointed out to you that according to the decision of your Hon'ble predecessor in Office, the elected Ministers had freedom of speech on the floor of the House, which they could exercise even if they disagreed with the 'official' view of the Government on any issue. (This position is in strict accordance with the provisions of the present constitution). But your reply was that elected Ministers should not only speak but also vote in support of the official view and that they could not even remain neutral in case of difference of opinion. I urged that this was not only the repudiation of the previous arrangement but was also repugnant to the express provisions of the constitution, as amended by His Highness the Maharaja Bahadur after the appointment of Popular Ministers. According to this amendment the two Ministers are to retain their status as members of the Praja Sabha which they occupied before appointment as Minister. Needless to say that the status of these two Ministers before such appointment was that of elected members who had complete right of vote and freedom of speech on the floor of House. Obviously therefore, any restriction of that right is repugnant of the constitution.

You, however, did not seem agreeable to modify your view And nor was I inclined to accept your. The actual position, however, during the last Session in the Assembly did not result in any serious difference of opinion on any important issue before the legislature, but the position is liquid and demands immediate final settlement. I maintain that the amended constitution gives effect to the spirit and policy underlying no departure there from can be made.

I would further add that any attempt to restrict the right of vote end speech of the two elected Ministers is bound to lead to non-confidence in them by their electorate, and is further fraught with the possibilities of coming into conflict with the declared policy of associating the subjects of His Highness with the administration of the State.

2. Soon after my assumption of office anomalous position with respect to P.W.M. came to light. Whereas every other Minister of the Government has a Secretariat of his oven over which he exercises complete administrative control, such is not the case with the P.W.M. He has no Secretariat attached to him or responsible to him. At present he works through the Home, Revenue and Development Secretariates, none of which is affiliated to him. He hoped that after his appointment by His Highness the consequental changes would be effected by the Government but as things turned out no action was taken. After a thorough discussion with your Hon'ble predecessor-in-office, who realised the difficulties and recognised the need of a separate secretariat in the case of P.W.M., the latter sent in a memorandum on 28.12.1944.

Prompted by the desire, which he was confident, that his other Hon'ble colleagues shared with him, of making the experiment so graciously introduced by our benign Ruler of associating his subjects with the governance of the State successful, the P.W.M requested that any possible difficulties in the direction should be forthwith removed. But unfortunately the proposal made no headway until Sir B.N. the former Prime Minister, relinquished office.

After assumption of office by you the matter was brought "to your notice in verbal discussion and ultimately a written request was made under my No. 2151p/45 dated 21st Augusta 1945 in which the original proposal for creating a small Secretariat was repeated. Inspite of repeated requests, made verbally to you, no tangible result has followed. On 13th December, 1945, during a personal discussion on the issue you expressed your readiness to make a sort of adjustment by bifurcating the Home Secretariat in two branches-each under H.H.M & P.W.M. But even this halfway measure, though falling for short of my original request, has not fructified.

I pointed out to you the present anomalies of the Secretariats who have to deal either exclusively or mainly with the work under the Public Works portfolio, have absolutely nothing to do so far as administrative control is concerned with the P.W.M. So much so that questions of their leave, promotion, record of their service book and confidential rolls are the exclusive concern of other Ministers with whom they may have to do nothing whatsoever. Such is the present. position which to my mind is both anomalous and unsatisfactory.

I need hardly add that experience has convinced me that nothing short of my original proposal can remove the present tremendous difficulties as well as do away with the discriminatory position between the P.W.M. and his other Hon'ble colleagues. The delay to take decision during the last 13 months has done considerable damage and is sure to do more.

3. You know the fate of Municipal Bill that I proposed in March 1945. K.B. Mirza Jafar Ali Khan, the then officiating Prime Minister, did not take it up as he thought that it involved an important issue. I expressed my disagreement with him, but was assured that the matter would be further considered and definite conclusions arrived at shortly. I waited from some time but when I saw that the case did not make any headway I pressed it again. The result was that in spite of the urgency expressed by me, the question was referred to the Adhoc Committee consisting of H.H.M., H.D.M and P.W.M.

Meanwhile feeling that there was too much centralization in the present Act and the Minister-in-Charge who is supposed to be responsible for the municipal administration is practically without powers. I suggested certain delegation under the Act to the Minister vice my memorandum for submission to Council No. 859-M/45 dated 09.9.1945. These powers are now vested in the Government, though to my mind they are of too petty importance. It will be well worthwhile to mention some of them here:

S. 13. Acceptance of resignation by a member of a Committee
S. 14. Notification of election and appointment of members
S. 29. Directions to a Committee to make bye laws
S. 31. Sanctioning of delegation of powers to Municipal Servant
S. 38 (2). Power to hear appeal from a member held responsible for loss or waste of money
S. 40 (1) (d) Power to sanction an expenditure to be an appropriate charge on the recommendation of the Committee
S. 63 (b) Power to hear appeals against notices of demand
S. 66. Power to hear appeal against levy of tax
S. 69. Power to prescribe conditions for regulating offensive trades
S. 91. Power to prohibit use of a place for an offensive trade
S. 155. Power to require a Committee to make bye laws for regulating articles of food drink
S. 174. Power to hear appeals against the orders of a Committee or its officers

Mere perusal of these matters which have now to go to Council for sanction should convince any body that such a centralization is bound seriously to hamper progress and efficiency of work. The Minister is not even competent to accept a resignation, or notify an election or an appointment of a member. He

cannot direct the Municipality to make certain bye-laws respect to general sanitation etc. He is powerless even in matters of hearing appeals against petty questions disposed of by Committee. It may incidentally be mentioned that functions like these are discharged in British India by officers of lower status than a Minister. Here they are centralised in the Government though they generally pertain day to day administration of the Committees.

As some of these powers were in actual practice exercised by my Predecessor-in-office I also asked for validation of that practice.

This proposal also has met the same fate. Not that decision has been taken but it was not even put before Council. I was recently extremely surprised to find that nearly 161 cases of varying importance were taken up and mostly disposed of by Council, but this proposal though considered by the Minister-in-Charge as very urgent did not find place in that agenda. On October 13, 1945-vide my D.O No. 859-18/45 of 13.10.1945. I drew your attention to my previous proposal on the point again and requested for immediate action. But even this did not produce any result. It is now nearly 4 months that the matter has been hanging fire, meanwhile the work is practically held up.

4. I also referred to other matters during my discussions with you as well as your predecessor. These are of tremendous public importance for which I have always felt that the elected Ministers should be consulted. Take for example the questions relating to law and order. Practically the whole of Kashmir is ruled by ordinance: at present Rule 50 of the Jammu and Kashmir. Defence Rules is in force banning all public processions and meetings. This is so even in my own constituency which I am legally and constitutionally bound to represent in all matters. Never before or after the promulgation of Defence Rule in question has the matter been discussed with the representative in Council. Nor even a courtesy reference was made to me whose whole constituency is under an ordinace at present. This is a serious position, which, as public representative whose status as such has been maintained in the constitution referred to above, by the August Ruler-l have to take notice of. You can well imagine the lot of an elected member whose constituency in matters of civic rights is dealt with like this and who has no voice in these matters. The public at large consider him in their ignorance of the actual working, a party to such decisions.

Whereas he himself is kept in complete ignorance from start to finish. The public representative in these cases comes to know of what has happened through press only. This position is extremely difficult and embarrassing. If it is intended that the elected Ministers should continue to represent the people, it exposes them to the unmerited public criticism on Government measures with which they themselves may disagree.

Same is the position about the distribution of controlled commodities which has assumed enormous importance during recent years From time to time I have addressed various Communication and made a number of references to this during discussions, but generally speaking without result.

On the whole the matters referred to above are of tremendous importance and I feel convinced in my mind that if immediate decisions on the lines indicated are not taken, the real value of having elected Ministers will be considerably reduced If it would not totally disappear. That would be against the Intentions and policy of our beloved Ruler, which every one of us must guard against. And most unfortunately-~t is painful to reiterate- this position has been allowed to persist for more than a year and the sooner, therefore, it is rectified the better.

Yours sincerely
Sd/- M.A. Beg

The Hon'ble
Rai Bahadur Pt. Ramchandra Kak,
Prime Minister,
Jammu.

89 Rai Bahadur Pt. R.C. Kak, Prime Minister Jammu & Kashmir State to Mirza Afzal Beg.

Letter No. 16-CC/46 D.O.

12.2.46

Legal Document No 88

My dear Mr. Beg,

I write to acknowledge receipt of your demi-official letter No. 11-P/46, dated 15th January 1946. The various matters you have raised are dealt with in the following paragraphs which, I might mention, embody the views I have expressed to you from time to time in regard to these matters.

1. Right to Vote in the Assembly. If a Minister has the right to express and urge his point of view in the Council but if the decision of the majority goes against him it naturally follows that he will accept and endorse the policy of the Government of which he is a member. The amendment to situation the Constitution Act quoted by you was made, as you knot, with the sole object of meeting the situation arising out of the ruling given by the President, Praja Sabha, to the effect that by virtue of your and Wazir Gangaram's appointment as Ministers the elected seats in the Assembly held by you had become vacated. The amendment preserved your status as non official members of the Praja Sabha, but has no relation whatever to the question of Ministers voting in the Sabha Sir B.N. Rau's opinion was that you and Wazir Gan~aram should be debarred from voting, but that opinion had no sanction behind it, and hi practice would involve serious difficulties. I am autllorised to inform you that there was no question at any time of the Ministers appointed by His Highness from amongst the members of the Praja Sabha being given the option to vote in the Praja Sabha independently of the decision of the Government and no such meaning can be read either into His Highness's Message to the Praja Sabha dated 2nd October, 1944, or into the amendment to Constitution Act referred to by you

2. With regard to the question of Secretariat as you are aware, for the last several years, the Secretariats have been of a composite character and each Minister has to deal with several Secretaries and Secretariats. So long as the, number of Ministers coincided with that of Secretaries, though an anomalous one, could continue without much difficulty, but with the increase in the number of Ministers its inherent defects became immediately noticeable. When you mentioned the matter to me, I explained how undesirable it would be to create and retrench Secretariats as circumstances necessitated increase or decrease in the number of Ministers, I added that in British Indian Provinces and in certain Indian States, Secretariats remained constant while the number of the Ministers, varied as circumstances demanded. When the Secretariats were reorganised in 1939 and the posts of Secretaries were made tenure appointments, the allocation of departments among the Secretariats no longer continued to be identical with the portfolios the Ministers who controlled them. In the circumstances the logical course would have been to combine the Secretariats for purposes of administration though they might continue to function under the Ministers in respect of the preformance of their appointed duties. I however offered, as a purely temporary measure, to place under you the Public Works Secretariat with either the Secretary or the Assistant Secretary. You preferred the Secretary for all purposes in the same manner as other Secretariats where under other Ministers. You accepted the suggestion but pressed that the establishment in other Secretariats dealing with the departments under you should also be transferred to this Secretariat. This however, would have meant going back to the system which had been discarded in 1939 after detailed consideration, and it was therefore, impracticable when the order was drafted, to implement the suggestion made by me. The Chief Secretary Informed me that he understood that the arrangement would not be acceptable to you. The only solution, therefore, was the logical one, namely that of placing all Secretariats for purposes of administration under one authority. A proposal divas accordingly submitted to Council and received the support of the other Ministers. Orders have since been passed and your position

is exactly that of your colleagues with reference to the Secretariat. Moreover you have a Personal Assistant which the other three Ministers have not.

3. Delegation of powers under the Municipal Act. The reason why this case has not been put up to the Council is that the Law Department has not accepted your view that powers can be delegated to you as proposed, under the existing provisions of the Act. I have, however, asked the Chief Secretary to submit the case to Council where your proposal and the objection of the Law Department can be discussed. In any case it appears to me, there should be no difficulty in Disposing of these cases in accordance with the existing provisions of the Municipal Act even if it is assumed, as you assume, that your predecessor exercised powers which he was not Entitled to exercise under the law. It is conceivable that these Provisions lay down a procedure entailing unnecessary work

On the Council but that cannot be a sufficient reason for holding up disposal. As a matter of fact, when in Srinagar, you spoke to me on this subject you remarked that you would be compelled to send the cases to Council, I replied that it was open to you to do so. As there is an Ad Hoc Committee considering further amendments to the Municipal Act, may I suggest that this Committee might consider any amendments. in regard to the sections referred to in your letter, should the Council find on consideration, that the Law Department's. Objection to your proposal is insuperable.

4. Enforcement of Rule 50 in certain parts of the State Magistrates and Police Officers powers which are vested in them by statute, rule or orders of Government. The purpose for which they are armed with these powers is that they should be able to discharge their primary responsibility, viz. ensuring the maintenance of law and order and preventing breaches of peace, without being obliged in each case and on each occasion to ask for instructions. In this behalf there is no difference in law and practice as between this state and anywhere else. So far as the question of securing information with regard to happenings in the State is concerned, you get information like other Ministers, since like them you are supplied with police diaries every day. In addition, whenever you have sought for information or explanation from me, I have readily furnished it to you to the best of my knowledge. It is not possible to lay down that the Magistrates and the Police must refrain from taking action in the discharge of their responsibility without previous approval of higher authorities. In fact, though, Law and Order is within my individual sphere of responsibility, even I often receive information only after action has been taken by the Magistrates and the police.

So far as the enforcement of emergency laws is concerned' discretion to enforce them rests with the District Magistrates. It is only when they find that the ordinary processes of law are inadequate to deal with the actual outbreak of disorder in a particular place, that they have recourse to emergency measures. This applies to your Constituency as to other places, and this State is not unique in the application of such measures in given circumstances. Even where such laws are in force meetings can be held and have been held in some you yourself have participated and processions taken out with the permission, of the competent Magistrate, who when considering request for such permission has to satisfy himself that there will be no breach of the peace if the permission asked for is granted.

5. Distribution of controlled commodities....You have made passing reference to the question of the distribution of controlled commodities. There have been and I dare say may still be shortcomings in distribution but things have improved considerably in recent months. Any suggestions received from any quarter regarding improvement of control arrangements have been practicable. Any suggestion you might make which is generally acceptable and will work in practice will have my full support.

6. You have referred to his Highness massage to the Praja Sabha dated 2nd October, 1944. It must be the endeavour of all of us to ensure that the intention underlying the message should attain fulfillment. To achieve this object we have all to work together and it is hardly necessary form. to add that the measure of our success will be in proportion to the spirit of goodwill and accommodation we bring to the common task.

Yours sincerely,
Sd /- R. C. Kak

The Hon'ble Mirza M.A.Beg,
Public Works Minister,
Jammu.

90 Mirza Afzal Beg, Minister for Public Works to Rai Bahadur Pt. R.C. Kak, Prime Minister, Jammu and Kashmir State,

Legal Document No 89

My dear Kak Sahib,

I write to acknowledge with thanks the receipt of your D.O. letter No. 16-CC/46 dated 12th February, 1946.

I find some new points have been raised in the D.O. and therefore it is necessary once again to clarify the position in the hope that it would be fully appreciated.

1. To begin with, I draw your attention to the matter touched in the last paragraph of your letter under reply, wherein His Highness' message of the Praja Sabha dated 2nd October 1944 has been referred to. I have throughout made -it clear that the view I take is strictly in accordance His Highness' Proclamation and in pressing various matters from time to time I hate been prompted only by the desire to make the present experiment a complete success. I need hardly say that in actual practice also, I have done my utmost in that direction.

The intention underlying the Proclamation is the effective association of His Highness subjects in the Government of the State. The direction hi the Proclamation that official block in tile Assembly was not to participate in the proceedings relating to selection of members to the panel, clearly indicated that officials should not influence the decision of the Assembly. This ensured that the representatives of the people - according to the Assembly - should largely determine the appointment of Ministers. Thus to the advice of Ministers so selected considerable weight attaches in matters of public importance and to my mind this cannot be lost sight of in the disposal of questions pertaining to the administration. An earnest attempt to accomodate their view point should be forth coming and it cannot be brushed aside totally simply because majority take a different view on any issue before the Councils The position taken that "if the decision of the majority in the Council goes against the member, he has to accept and endorse the policy of Government", 1 am afraid, does not strictly stand.

In the appointment of Ministers of Council, as at present. constituted, His Highness has adopted two different and distinct methods. Where in the case of popular Ministers they are elected in the prescribed manner and are eligible for re-appointment only if they remain members of the Praja Sabha, such is not the case with other Ministers. That it is His Highness' Command. While implementing it, earnest effort should be made by us all to avoid possibilities which will land the elected Ministers in embarrassments and positions of nonconfidence by public. Whoever is appointed as a popular Minister under the present system must according to the spirit of the Proclamation retain public confidence which can be only retained if the popular view point as expressed by such Ministers is given due weight to. On the contrary, if the decisions of the Council are to be taken by actual voting, the Popular Ministers surely will find themselves in minority in the Council, even if they always vote together. In such a contingency these Ministers have to bear the brunt of public criticism, which the other Ministers can offered to ignore. Should such an issue be an important one, may I ask how these Ministers can continue to enjoy public confidence, especially when you expect them not to express even their individual opinion by means of vote on the floor of the Praja Sabha. There have been occasions on which I differed from the view taken by my other colleagues in Council and if I am not even allowed by the Government to vote in favour of that view I feel that it is not only suppression of opinion but will also lead to consequences directly in conflict with the spirit of the Royal Proclamation.

Whereas I concede that it should be an earnest effort at unanimous decision-and I have always acted in that spirit-yet a contingency may arise where on an issue of very grave public importance a Popular Minister may honestly differ. That Government should expect him in such a contingency to vote with it would. I am afraid, be too much.

2. In my note dated 30th January 1945 which I recorded on the case relating the amendments of constitution, I made my view quite clear. I then said:

"It is however, hoped that the Popular Ministers will be able to influence the policy of administration in accordance with the views of people for otherwise these Ministers would lose their popular confidence and support-may be, sometimes not by reason of any action on their part but as a result of the measure taken by the Government. Again such loss of popular confidence is apt to bear an adverse effect on the ability of the Ministers to render their best service. In that case not much would be gained by selecting Ministers from the Legislature. Such a state of affairs, I very much fear, will not be in accordance with spirit of the proclamation."

"The Constitution Act was subsequently amended and though it referred to the retention of status of the elected Ministers in the Praja Sabha, it also amended the provisions of Section 28 of the Constitution Act. Obviously, therefore, the amendment was not aimed at only preserving our 'status as non-official members of the Praja Sabha"...

Even in relation to the preservation of such "status" the question arises as to what that status is. To my mind the status of an elected member of legislature is, in actual practice determined by his ability to represent his constituents and hence by his freedom to voice their feelings (and according to you also the amended Constitution Act retains our representative character). Otherwise if he is retained as elected member of Praja Sabha for keeping the elected seats occupied and compelling him to vote and speak for the Government view point, I am afraid such a position does serious damage to that status. Such a position not only raises the question of coming in to conflict with the Proclamation, as I have said before, but also a more embarrassing question of the general constitutional right recognized by our Constitution Act of 1996.

You have referred to Sir B. N.'s opinion according to which the two elected Ministers were 'debarred from voting, But according to what you propose this 'disqualification' is intended to be removed only to compel us to vote in support of the official view of the Government, even though we may disagree with it and might have expressed our disagreement even in the Council too.

In the concluding sentence of the first paragraph of your letter you say there was no question of the Ministers appointed from amongst the members of the Praja Sabha being given the option to vote independently of the decision of the government. According to the implication of the words underlined the elected Ministers can be given an option of vote by the Government. As convention can, therefore, be set up by the Government itself for such option in matters where agreement in Council canot be reached.

You have not in your letter under reply referred to our freedom of speech on the floor of the House, which in my previous letter, I said was preserved.

3. It is true that on 21st January, 1945 the Council have taken their decision of combining the various Secretariats into one under the administrative control of the Chief Secretariat, which is attached to the portfolio of Hon'ble Prime Minister. In my discussion with you on 13th December 1945 to which I referred in the second pare of my previous D.O. it was agreed, though as a temporary measure, to bifurcate the Home Secretariat, as indicated in your D.O. under reply. After this the Chief Secretary once made a passing mention that you were examining the question of the Secretariats. I said that the temporary arrangements agreed upon with you shall have to be made by an executive order or otherwise, exactly as the other Secretariats are put under Ministers and that in this

At least there should be no difference. In my D.O. of 15th January, 1946, I therefore referred to this temporary arrangement again, though I pressed that for the final settlement of the matter, a separate Secretariat was necessary.

The question of transferring the establishment in other Secretariats dealing with departments under me was raised when Hon'ble Home Minister said that he was exercising and should continue to exercise administrative control over similar establishment under him in other Secretariats. I therefore suggested that in the event of bifurcation of the Home Secretariat, as contemplated by you, the position of Public Works Minister should be put on similar footing.

The anomalies that I pointed out about the Secretariat working under the previous system continue even now. For purposes of appointments, transfers, leave etc., they will be under the Chief Secretary whereas in respect of performance of duties they will be working under various Ministers.

You have referred to the personal Assistant under me.

May I point out that whereas all Ministers except me have Parliamentary Under Secretaries, I preferred to have a Personal Assistant.

4. So far as the question of delegation of powers under the Municipal Act is concerned you have referred to an objection that Law Department has 'now' taken. I am really surprised to hear this though I feel that I should have been told so earlier especially since 1 had addressed a Do). after submission of the memorandum. requesting that the matter should be expeditiously dealt with.

I am surprised at the Department's objection because before submitting the memorandum No.859-M 45 dated 22nd September 1945, I had obtained the Law Department's opinion on the point at issue and enclosed a draft notification drawn up by the Law Secretary and Advocate General to the Government, proposing delegation of powers under Section 30-A. The Law Secretary asked if there was any objection to the delegation of powers. It is rather strange that after giving his definite opinion that delegation could be made under Municipal Act to the Minister in charge, he should now opine that such delegation is not correct. In this connection copy of his draft notification enclosed with my original memorandum may kindly be perused. The same question was also once before referred to him on 15th July, 1944. The Legal Rememberance and Advocate General then said, "There is no objection to the delegation being made under Section 30-A of the Municipal Act of 1998". A draft notification was then also vetted and drafted by Law Department and is on the file. It passes my comprehension how today a different view is expressed by the very same officer on the same question. May I tell you that is one of the instances how the method of dealing with my cases, leads to great embarrassment

I would incidentally like to mention that under Section 417 of Criminal Procedure Code the Government is empowered to direct presentation of appeals against acquittal orders by a Criminal Court. Some section authorises the Government to delegate these powers to any officer. Accordingly power to direct to prefer an appeal against acquittal has been delegated under notification No. 5-P184 to the Law Minister. There is absolutely no comparison between the powers delegated under this notification to the Law Minister and those which 1 had requested to be delegated to the Minister-in-Charge Municipalties. In the former case the Law Minister is competent to direct preferment of appeal which may lead to hanging a person, whereas in the latter the Minister-in-Charge, assuming his request for delegation is granted, will only be exercising powers of direction for preparation of bye-laws with regard to sanitation or petty increment and promotion questions etc.

Again powers vested in the Government under Land Revenue Act have been delegated to the Hon'ble Revenue Minister. I am, therefore, really surprised to understand why a different outlook should be brought to bear upon the disposal of the question when in identical circumstances, the delegation is asked for by me as Minister-in-Charge Municipalities.

You have referred to my talk that I had with you on this question in Srinagar. I did say that I shall be 'compelled' to send up the cases to the Council in case the delegation was not granted. May I remind you that this was in reference to your suggestion that the question of hearing municipal appeals may be delegated to a Court which involve amendment of the Act and hence reference to Legislature. Though that would be a unique procedure, as I pointed out then, I did say that I would be compelled to send these cases to Council-I would surely have done that, if either the Law Department had disagreed with me or the Council recorded their decision that delegation cannot be granted. In that case I would really be "compelled" to do it. Unfortunately neither my memorandum was put up to the Council nor my D.O. letter requesting for immediate action in the matter was replied to.

After carefully reading paragraph No. 3 of your letter I feel it is indicated that these cases should be sent to Council for disposal. I am, therefore, issuing orders to the Secretary accordingly.

The Adhoc Committee referred to in paragraph 3 of your letter has since sent up its report. I would like to point out that under previous Council decision that Committee could examine only the clauses of the Bill referred to it and the question of examining the delegation would be outside its purview, unless it is intended that the Committee should launch upon that investigation now.

5. So far as promulgation of Defence Rules in concerned from purely technical point of view the position explained by you in paragraph four of your D. O. may be correct and it may really be difficult in cases of grave emergency for competent Magistrates to seek instructions before the event. But the position has also to be viewed from other technical stand point. Failure of ordinary processes of law and recourse to rule by ordinances is always an abnormal position and the more recourse is had to the application of ordinances, the greater and heavier is the responsibility of those charged with the duty of maintenance of law and order. In such circumstances, therefore no, Government can excuse itself by merely saying that grave apprehension of breach of peace necessitated recourse to Ordinance without minutely going into the merits of every case, after promulgation.

Promulgation of Rule 50 in vast areas and for number of months at a stretch and sometimes for indefinite periods is an extraordinarily grave position. But I doubt very much if in any case any enquiry has ever been held whether recourse to Ordinance was justified both in its extension of time and space. This attitude, to my knowledge, continued in the face of unanimous protests both from press and public organizations and no attempt was made to look into the question. I am afraid though law and order, as you say, is your individual responsibility, the Government as a whole has to face this position. Though Popular Ministers were always available for consultation their views were not obtained even after the promulgation of ordinances. People in distant villages who under the abnormal conditions created by war were facing acute hardships could not express themselves in public meetings as the same were banned.

Though in places near the District Magistrates headquarters permission to hold meetings could be easily requested for but this was well-nigh impossible in the case of far off places which had to suffer, even though in those areas no apprehension of breach of peace actually existed.

Issues arising out of such situation often form subject of serious protests in the Praja Sabha where you expect me to vote with you, it was, therefore, all the more important the, if due to emergency previous consultation was impossible careful examination of the whole situation by Council or at least with the Popular Ministers after the promulgation of Ordinances should have been held in each case. This would have not only helped us in satisfying ourselves that the real emergency existed and the powers were used to the minimum extent necessary, but the embarrassing position that we have certainly to face on the floor of the House would also have been totally avoided. Such an examination was also necessary in every case, because failure of ordinary processes of law to meet a given situation is always an abnormal position, about the merits of which the Government must satisfy itself completely. On the contrary, matters have been allowed to drift to the extent that I was once completely surprised that even the District Magistrate of Kashmir did not know whether restrictions under Rule 50 applied in a particular locality. I am referring to the case of Bijbehara which presumably I mentioned to you last year. I dare say we cannot congratulate ourselves on such a state of affairs. It is true that it means more embarrassment for an elected Minister who has to be more responsive to the public opinion, but for the Government as a whole also such a position should be unwelcome as it brings it into disrepute, which is avoidable.

May I here make mention of the recent sad happenings in Jammu. Even here the Government will be well advised to hold a sifting enquiry into the whole position with a view to find out why those charged with the duty of maintaining law and order first failed by ordinary means and when extraordinary means were had recourse to, if no abuses were committed.

6. So far as distribution of controlled commodities is concerned I am fully conscious of the hard time that we have had to pass through on account of war and I have left no stone unturned in bringing home to the minds of people as far as I could, the necessity of their cooperation in this respect. But nevertheless the fact remains that I addressed in this behalf a number of communication from time to time but even I often failed to evoke a sympathetic response in this behalf.

I have only to reiterate that the new reform introduced by His Highness and his Proclamation of 1944 necessitate a reorientation of out-look to be brought to bear upon the administration of the State.

I would request for IN immediate reply so that in the light thereof I may be able to see how far I can render my services towards the implementation of the spirit of the Proclamation as explained above.

Yours sincerely
Sd-(M A Beg.)

The Hon'ble,
Pt. Rai Bahadur Ram Chandra Kak,
Prime Minister, JAMMU.

91 Rai Bahadur Pt. R.C. Kak, Prime Minister, Jammu & Kashmir to Mirza Afzal Beg

Letter No. 25-CC/D.O.

March 14, 1946

Legal Document No 90

My dear Mr. Beg,

I write to acknowledge receipt of your demi-official letter No. 30-P/46 dated the 23rd February 1946, and to say that I have carefully perused it. I find that in substance it is practically a reiteration of what you had stated in your previous letter to which I have already sent a reply. I shall, therefore, deal with it as briefly as possible,

1. With regard to the question of voting and this applies also to speaking- it is not possible to allow an individual member of the Government to act in a manner which is at variance with the policy of the Government. No Government can satisfactorily be carried en this basis. The position that may arise in case such freedom of action is recognised has only to be stated to demonstrate how untenable it is. For example, if your suggestion were accepted, five members of the Government would on occasion be divided into three units each pulling in a different direction. This you will surely agree would be a ludicruous and anomalous position which would be fatal to the success of the experiment initiated by His Highness. Every Minister can of course (as both you and Wazir Gangaram have done repeatedly) advocate and influence policies within the Council.

So far as the interpretation of His Highness's Message is concerned, I report, what I stated previously, that I am authorised to inform you that it was not the intention of the Message (and ipso facto of the consequential amendment to the Constitution Act) that Ministers appointed in pursuance thereto should have the choice of independent voting and speaking.

2. As regards the Secretariat no further remarks are necessary as the matter was fully considered in the Council in your presence and action taken in accordance with their decision which was confirmed by His Highness. Your position is exactly that of other Ministers in relation to the Secretariat.

Incidentally I may mention that the parallel you have drawn between your Personal Assistant and the Parliamentary Under Secretaries does not hold good as-the latter function only during the Session of the Praja Sabha and in regard only to matters pertaining to the Praja Sabha, whereas your Personal Assistant is a whole time officer who is always at your disposal. In any case, should you desire it, I am prepared to place my Parliamentary Under Secretary at your disposal for the work which Parliamentary Under Secretaries usually perform.

3. With regard to the delegation of powers under the Municipal Act, it is correct that the Law Department gave an opinion which they modified later. The Law Secretary tells me that modification was due to further consideration on a reference from the then Chief Secretary. In any case l have already told you that the matter will be put up to the Council for decision.

4. As regards the application of Rule 50 and other Emergency Powers, you have agreed that what said in regard to tile exercise of these powers by the Magistracy and the Police is "technically" correct. But you suggest that subsequent investigation should be made to ascertain whether the exercise of such powers was necessary in the circumstances. Naturally where it is felt that Emergency Popovers have been wrongly applied by the Magistrates, Government will take such action as circumstances may warrant, but it is obvious that any interference by the Government with the discretion of the Magistrates in the discharge of their duties in regard to the maintenance of law and order will entail grave consequences, as I have already pointed out to you, and must therefore be avoided as far as possible.

5. As regards distribution of controlled commodities, this matter is fraught with difficulties which are not peculiar to this State. I repeat that any suggestion placed before me, which will meet with general acceptance and work in practice, will have my support.

6. I trust that I have made the whole position clear to you. I should like to add that you were selected in consideration of support which members of the Sabha, majority of them 'widely differing from the policies favoured by your group, gave you. It was and is His Highness' hope and aim-and this was generally recognised by the members of Sabha and by Else large number of members outside your group who supported you that the Ministers selected from amongst the members of the Praja-Sabha act in the common interest of all; and by influencing the decision of the Government on the one hand and by explaining to the people the aims and objects of the policies of the Government the difficulties confronting it on the other, promote an "entente cordiale" which would benefit the State as whole, I sincerely trust that this hope will be fulfilled.

Yours sincerely,
Sd/-(R.C. Kak)

92 Mirza Afzal Beg to R. Kak, Prime Minister, Jammu and Kashmir

17th March, 1946

Legal Document No 91

My dear Prime Minister,

Kindly refer our correspondence ending with your D.O. No. 25-CC/D.O. dated 14th March, 1946.

After having carefully considered the position, I feel there is no alternative left to me except that of tendering resignation from the office of the Ministership which I hereby submit.

I would therefore request that I may be relieved immediately.

Yours sincerely,

Sd/- (M.A. Beg)
Jammu
17.3.46

93 R.C. Kak, Prime Minister, Jammu and Kashmir to Mirza Afzal Beg

17th March, 1946

Legal Document No 92

My dear Mr. Beg,

March 17, 1946

1. Will you please refer to your letter of date, just received (7.45 P.M.) intimating your desire to resign your office as a Minister in His Highness Govt.

2. I am submitting the letter to His Highness tomorrow morning end will communicate to you his commands as soon as they are received.

Yours sincerely,
Sd/-(R.C. Kak)

The Hon'ble
Mirza M.A. Beg,
Public Works Minister,
Jammu.

94 Mirza Afzal Beg to R.C Kak, Prime Minister, Jammu and Kashmir

18th March, 1946

Legal Document No 93

My dear Prime Minister,

Kindly refer to your demi-official letter dated 17th March 1946.

As constitutional difficulties are bound to arise any time during the Assembly session, I shall feel grateful if I am relieved of the office of Ministership immediately.

Yours sincerely,
Sd/- (M.A. Beg)
Jammu
17.3 46

95 R.C. Kak, Prime Minister, Jammu and Kashmir to Mirza Afzal Beg

Letter No. 31-CC/D.O.

19th March, 1946

Legal Document No 94

My dear Mr. Beg.

Will you please refer to your letter dated 18th March 1946 and to the conversation you had with me on the subject when you expressed your inability to wait the receipt of His Highness commands on your letter of resignation and asked to be relieved at once. In these circumstances I am requesting Mr. Mekhri to relieve you.

Yours sincerely,
Sd /- (R.C. Kak)

The Hon'ble
Mirza Mohd Afzal Beg,
Public Works Minister,
Jammu.

96 Dyarchy Statement of Sheikh Mohammad Abdullah

Legal Document No 95

The proclamation of October, 1944 by which His Highness had indicated his willingness to associate non-official members of the legislature with the task of administration through the parties in the legislature sending their nominees into the Cabinet, two in number, was naturally welcomed by the National Conference. Even though the transference of responsibility was partial it at least was an opportunity for us to come forward and assist in steering the boat of the State at a time, when the lives of our people were storm-tossed through the distressing problems of hunger, poverty and slavery.

For the last eighteen months we gave a trial with patient persistence and have looked upon the functioning of the experiments from all angles, till we are finally force to the conclusion that no good can come out of sharing responsibility in the cabinet in which the irresponsible elements dominate decisions and policy. The popular Ministers Mirza Mohammad Afzal Beg, had to face unfair administrative, non co-operative indifference of the old type Cabinet members, and found himself fettered by intolerable bureaucratic red-tapist restrictions even in the functioning of their own departments. Besides all this, a debate one constitutional issue which had remained a moot point between him and the Prime Minister crystallised the situation. Hence our considered decision that he should resign.

To start with, every unfair attitude was shown in the allocation of portfolios. The nominee of the National Conference was given the Departments of P.W.D. and Municipalities leaving out control on the panchayats. He was given charge of Stationery and Printing and charge of the State property in British India. The allocation of these portfolios to the nominee of the people's biggest representative organization seems to be a huge joke. Successive Prime Ministers admitted the unreasonableness of such an allocation and had promised to reshuffle But nothing happened. Mirza Mohammad Afzal Beg's exclusion from the administering of vital departments directly baking him with the people was not a mere accident, but now I could say with emphasis, was part of a deliberate line of action which unfolded itself as time went on. Could it ever be imagined that a Minister could function efficiently and effectively without any Secretariat at his disposal directly responsible to him ? This is exactly What happened. Further the civic life of the measures of far reaching importance to people in the form of the Municipal Act were proposed by our Minister. These were intended to democratise the Municipal machine. These measures have remained in cold storage.

In administering law and order, restrictive ordinances hitting the basic civil liberties of the people had been promulgated without Mirza Mohammad Afzal Beg knowing anything about them. The measures were adopted in the constituency which the Minister himself was representing and he himself knew nothing about it. Therefore, under these circumstances, it was ridiculous to expect the Popular Minister to side with the Cabinet of ministers in the legislature on all points surrendering his right to disagree and indicate his differences on the floor of the House or even to remain neutral. This would eve meant in effect a betrayal of the people's interest and of the policies of the party whose nominee he was. Constitutionally speaking, by an amendment to the Constitution Act, the popular minister had retained their status as elected members of the Assembly and their responsibility to the electorate could' not be ignored. During the time of Sir B.N. Rau, the late Prime Minister, a somewhat workable formula had been discussed by which a dissenting minister could speak on the floor of the House expressing his view-point, and then stay neutral In voting. The new Prime Minister, Rai Bahadur Pandit, R.C. Kak repudiated the Rau formula and thus precipitated the constitutional deadlock.

It is a contradiction in terms to keep Ministers responsible to the electorate and to compel them to support every measure of an irresponsible government.

It augres ill for the future that we are entering the tumultuous times that lie ahead with a discredited constitutional experiment at our back. In the name of the National Conference I appeal to the Maharaja Bahadur to end this farce of diarchy and grant truly Responsible Government to the people of Kashmir.

To the members of the British Cabinet Mission I would say: "Judge the constructive strength of our people s urge to freedom by the patient and persistent uphill struggle of our movement, including our attempt to give a fair trial to the constitutional experiment to our fellow patriots In British India. I would say, with your freedom is hnked our destiny and our freedom is the ultimate guarantee of the stability of independent India."

97 Sheikh Mohd. Abdullah's Statement on the Ministerial Crisis in the Kashmir State

April 22, 1945

Legal Document No 96

Recently the Jammu and Kashmir National Conference Working Committee reviewed the farcical character of the diarchic experiment and decided to withdraw Its representative from the Council of Ministers. Accordingly, Mirza Mohammad Afzal Beg resigned from the Ministership, and returned to the opposition benches.

The Prime Minister, backed by his clique of irresponsible bureaucrats, resorted to the base tactics of attempting to bribe and disrupt the ranks of the National Conference itself. In so doing they had resorted to Machiavellian ways, and Mian Ahmad Yar, the Leader of the whose appointment had taken place by direct command of the Maharaja, an

Assembly Party has fallen prey to them. His representative capacity just does not exist. Thus the Maharaja has not on y put an axe on the elective system of appointing popular ministers, on the lines of his diarchic experiment, but has become a party to the conspiracy against the popular movement in the Kashmir

Such an attack on the rights of the people, and the unity of their representative organization, has come at a time when the minds of the people of Kashmir are already exploring the new perspective opened up by the attempts at constitution making of the Cabinet Mission. The question of the treaty rights of the Princes has become a moot point between the peoples of the State, the Princely Order, and the Paramount Power. For us in Kashmir, the re-examination of this relationship is a vital matter, because a hundred years ago, in 1846 the land and people of Kashmir were sold away to the servitude of the Dogra House by the British for 75 lacs of rupees. The then Governor of Kashmir resisted the transfer but was finally reduced to subjection with the aid of British. Thus the sale deed of 1846, misnamed the Treaty of Amritsar, had sealed the fate of the masses of Kashmir.

For the last fifteen years since the inception of our freedom Movement in 1931, we have attempted to give a fair trial to all reforms believing that readjustment of human relationships will take place with the extension of the democratic framework to all fields of our national life. Thus we believed that we could come in line with the rest of the world in the era of the Atlantic Charter and tl1e revision of basic relationships with the dawn of the independence of nations

But once again the last act of His Highness has exposed the continuance of tile "feudal master governing the serfs" mentality. This state of affairs cannot be allowed to last The resurgent spirit of the people challenges it in the name of human dignity.

No sale deed, however sacrosanct can condemn more than four million men and women to the servitude of an autocrat when the will to live under this rule is no longer there. The people of the Kashmir are determined to mould their own destiny, and we appeal to the members of the Cabinet Mission to recognise the Justice and strength of our cause.

98 Resolution Working Committee All Jammu and Kashmir National Conference on the Treaty rights claimed by the Princes

January 17, 1946

Legal Document No 97

The Working Committee of the Jammu and Kashmir National Conference has taken into consideration the speech made by the Viceroy of India in the princes Chamber on the 17th January, 1946 along with the declaration made by the Chancellor of the Chamber on behalf of the Princes regarding constitutional advancement in the States. After fully examining the salient points in both the speeches, the working committee has come to the following conclusion:

1. That the advice tendered by the Crown Representative to the Princes regarding the steps to be taken in making the administration of these States progressive did not amount to anything progressive. In fact it lost all the significance when he (Viceroy) made such progress conditional on the maintenance of the treaties and the consent of the Princes. These treaties and engagements which are outdated, reactionary and questionable have always stood and will always stand in the way of the States People's progress and to think that the Rulers will give up their privileged positions that they enjoy under them at their sweet will is nothing but wishful thinking. The National Conference has at several occasions made It clear that these treaties have been made in times and under circumstances which do not obtain now and been framed without seeking the consent of the States People. Under such circumstances no treaties or engagements which act as a dividing wall between their progress and that their brethren In British India, can be binding on the people.

99 Statement of Sheikh Mohammad Abdullah on Indian States

1946

Legal Document No 98

(Extract)

The Indian States problems are closely linked up with those of British India. They are common both to British India and Indian States.

The British are well aware of the position, indicated the two lines of defence on which British Imperialism could relay. The first line of defence lies in the question of the Congress League understanding, with the implication of Hindu-Muslim unity. The second line of defence rests on the position of the Princes who, in the eye of British Imperialism, should be safeguarded.

With such a prospect before the people of India, it is necessary both for the people of British India and those of the Indian States to coordinate and merge the movements into a single channel. In order to do this, the people's organizations in the States should be strengthened.

The problem of the people in the States is primarily one of removing autocracy and establishing full responsible government. That object cannot be achieved unless a united front is offered by the people.

After the State's people's Conference at Udaipur I feel that the people in the States are now awakened more than ever before. There is now a more widespread political consciousness among them. It is true that sentiments have lately played a great part in the poetics of the Country, particularly in British India. Take the instance of the cry of Pakistan. It was born of distress. Now it is stripped of all reasons. The question before the Muslims will be whether the realization of Pakistan is a blessing to them. I personally think that Pakistan will not help the Muslim masses but hinder them in their struggle for political and economic emancipation. In our State this question however, does not arise, because an overwhelming majority of the people are Muslims and there is no need to fear Hindu domination.

100 Presidential Address Kisan Conference

May 11, 1946

Legal Document No 99

(Extract)

The movement of the toiling masses in the world has awakened us also. We have begun to look at the freedom struggle of our country front a different angle. Now political freedom alone is not our cherished goal. We demand and crave for social, economic and spiritual emancipation as well. The toiling masses of the subcontinent of India not only want to throw away the yoke of foreign imperialism but are also keen to free themselves from the bondage of indigenous feudalism and capitalism. The day of deliverance from alien rule is not far off. Events bear testimony to the fact that the British cannot stay long in India. There is awakening in-the country and the British cannot hold it in subjugation. But let me pose a question. Who will replace the British authority in India? Will there be a government of the upper classes or one representing the toiling messages? This is the main and the biggest problem facing the country at present.

The upper class Hindus, having thrown into background the question relating to the future Government of India, are engaged in the dispute over Akhand Hindustan with a view -to preserve their vested interests. Their counterpart among Muslims demand the establishment of Pakistan for identical reasons. But we stand neither for the one nor for the other. We believe that so long as it is not decided who the future rulers are to be we can neither support Akhand Hindustan nor side with the demand for Pakistan. Our first task is to do away with the prevailing social and economic inequality and injustice and lay the foundations of a new and just order of society. It is only when this objective is achieved that the people of India can themselves decide whether they want to preserve the unity of the country or device it. At the present moment the basic problem referred to above aces not receive necessary attention. The supporters of Akhand Hindustan and Pakistan want to preserve the present social order which is dominated by capitalists and feudalist. That being so the toiling masses can have least interest in this scramble for power.

Following in the footprints of the workers of Europe we have to put an end to the capitalistic and feudalistic social -order so that a new society based on social justice and equality is brought into being. We want an end of all kind of exploitation so that the peasants are not tyrannized and the mill-owners pet no opportunity to rob the workers of the fruits of their labour. All laws aimed at sucking the blood of the toiling masses need to be repealed and abolished. We want establishment of a society which will guarantee to the workers fullest opportunity for progress.

The freedom movement in our State is now fifteen years old. The toiling masses have nourished it by undergoing supreme financial and physical sacrifices but without any good to them. Only the upper classes have benefited by it. They have not only been able to preserve their vested interests but have also added to these. The reason is that both the toiling masses and the upper classes took part in this struggle and whereas the former fought for freedom, the latter used it to their advantage. Why it happened so is not difficult to understand. We had been entertaining hazy and vague notions about our goal so far. But now the Freedom Movement has reached a new stage. The toiling masses and the upper classes have fallen out. We want to revolutionize the present unjust society so that the toiling masses get their political and economic rights. This we call real freedom.

Till now the upper classes exploited us because we were not clear about our goal but they find that such exploitation is not possible in future. Freedom for us means establishment of a new social order in our country which knows no exploitation and guarantees equal social, economic and political status for all. Our moment aims at affording all the opportunities and facilities to the toiling masses here in our country which a man in this world is entitled to. The upper classes have raised communal slogans so that the masses are misled in the name of religion. Also with a view to preserve their vested interests the upper classes have founded parties in the name of the nation and the country. The toiling masses have nothing to do either with the communal organizations or the so-called nationalist parties. Our struggle knows no

communal barriers or nationalist prejudice. We are hostile to all distinctions based on colour, creed or race. We believe in a society which is free from the evils of landlordism, capitalism and feudalism and which is opposed to exploitation of man by man.

101 Quit Kashmir speech of Sheikh Mohammad Abdullah

May, 26, 1946

Legal Document No 100

(Extract)

The tyranny of the Dogras has lacerated our souls. The Kashmiris are the most handsome people, yet the most wretched looking. It is time for action. To end your poverty, you must fight slavery and enter the field of Jehad as soldiers. The fight slogan of our struggle is not only for our State but for the whole of India. India is fighting against Imperialism. The slogan was given on the banks of River Ravi ... Then came the slogan of 'Quit India.' The British gained hold of India by the force of arms and by treachery.

The rulers of the Indian States who possess one-fourth of India, have always played traitors to the cause of Indian freedom. The demand that the Princely Order should quit is a logical extension of the policy of 'Quit India.' When the Indian freedom movement demands the complete withdrawal of British power, logically enough the stooges of British Imperialism also should go and restore sovereignty to its real owners - the people. When we raise the slogan of 'Quit Kashmir,' we naturally visualise that the Princes and Swabs should quit all the States. I am sure this demand applies similarly to a State like Hyderabad where the people will, I am sure, raise their voice, 'Quit Hyderabad.'

Those Hindus who think along with Mr. R.C. Kak that the Dogra rule should remain, should never forget that we are treated in Kashmir as a bought-up race without distinction of religion.

Handcuffs jingle. They do not make us afraid. God will dive us faith in victory. The voice of truth will prevail. Prophets have spoken for the truth, which has always triumphed finally.

Sovereignty is not the birthright of a ruler. Every man, woman and child will shout 'Quit Kashmir'. The Kashmiri nation has expressed its will. I ask for a plebiscite on this question.

102 Telegram from Provincial National Conference Committee Jammu to the Viceroy and Maharaja of Kashmir

20th June, 1946

Legal Document No 101

The solution of the Kashmir problem is a test for the honesty of the British Government. The people of the State deserve the same status as the people of British India deserve. Our State is at present confronted with a most critical situation. None but Sheikh Abdullah and his comrades can face this situation. Their immediate release is very essential. The present ministry consists mostly of the enemies of the people. This ministry is keeping the leaders behind the prison bars by way of mischief. The idea of Azad Kashmir is ridiculous. The wisest course is to join the Indian Union under the leadership of Sheikh Abdullah.

103 Statement of Sheikh Mohammad Abdullah before the Sessions Court, Srinagar

Legal Document No 102

(Extract)

I am not interested in a personal defence, and I would not have undertaken it if I had not felt that my trial for 'sedition' is something far more than a personal charge against me. It is, in effect, a trial of entire population of Jammu and Kashmir, even though some of them, being content with their transient personal interests or out of fear, may not be prepared to recognise or openly declare this.

Oppressed by the extreme poverty and lack of freedom and opportunity of the people of Jammu and Kashmir State, I and my colleagues of the Jammu and Kashmir National Conference, many of whom are behind prison bars or in exile today, have humbly sought to serve them during the past sixteen years. We have endeavored to give faithful expression to the growing consciousness among the people of their imprescriptable rights, aspirations and desire for freedom. This has attracted the penal and preventive provisions of law. Where law is not based on the will of the people, it can lend itself to the suppression of their aspirations. Such law has no more validity even though it may be enforced for a while. There is a law higher than that, the law that represents the people's will and secures their well-being, and their is the tribunal of human conscience, which judges the rulers and the ruled alike by standards which do not change by the arbitrary will of the most powerful. To that law I gladly submit and that tribunal I shall face with confidence and without fear, leaving it to history and posterity to pronounce their verdict on the claims I and my colleagues have made not merely on behalf of the four million people of Jammu and Kashmir but also of the ninety-tl1ree million people of all the States of India. That claim has not been conned to the people of a particular race, or religion or colour. It applies to all, for I hold that humanity as a whole is Divisible by such barriers and human rights must always prevail. The fundamental rights of all men and women to live and act as free beings, to make laws and fashion their political, social and economic fabric, so that they may advance the cause of human freedom and progress, are inherent and cam1ot be denied though they may be suppressed for a while. I hold that sovereignty resides in the people, all relationships political, social and economic, derive authority from the collective will of the people..

It was clear that the old treaties with the States had to go. They represented something that had no relation to the modern world or to the India of today. They could not be reconciled with the inevitable changes in India and in the Sates. If this was clear to begin with, it become an accepted fact by the statement issued by Cabinet Delegation of 16th May last. That statement declared that paramountcy would end when the new constitution of free India came into being. It was an inevitable consequence that the old treaties and sanads and other engagements would go the way of paramountcy and the British Government being out of the picture, a new relationship would have to be negotiated between what is now known as British India and the States. The demand for the abrogation of the Amritsar Treaty was, in effect, disposed of by this clear decision. The future constitutional set-up-in the State of Jammu and Kashmir cannot derive authority from the old source of relationship, which was expiring and was bound to end soon. That set-up could only rest on the active will of the people of the State, conferring on the Head of the State the title and authority drawn from thetrue and abiding source of sovereignty, that is the people. The "Quit Kashmir" cry symbolised and gave concrete shape to this demand for the termination of a system of Government: which was in process of dissolution all over India. The cry had nothing personal about it....

Some allegations have been made that "Quit Kashmir" and the demand for the abrogation of the Treaty of Amritsar had communal or communist inspiration. This is a travesty of fact and I deny and repudiate these allegations. The National Conference is essentially a national organisation including in its fold all people who agree with its objective, and co-operating with the All-India States People's Conference, with which it is affiliated. It stands in the All-India context for the independence and freedom of India. It stands also for social and economic changes to end privilege and to raise the masses.

104 Resolution: Congress Working Committee on Kashmir

21st November, 1946

Legal Document No 103

The Working Committee have previously expressed their disapproval of the activities of Kashmir authorities during the past few months in repressing the people of the State and denying them their normal civil liberties. The Committee had proposed to send a deputation to enquire into these matters in Kashmir State and had invited the state authorities to cooperate in this task. The response from those authorities was not satisfactory and conditions in various parts of India delayed any action being taken on the previous resolution. Recent reports state that the Kashmir authorities are preventing free and fair elections to the State Assembly and have arrested the President and members of the Election Committee of the Kashmir National Conference. The Committee takes a serious view of the flouting of public opinion and of activities which must reduce the coming elections to a farce.

105 Statement of Mirwaiz Moulvi Yousuf Shah on Congress Working Committee Resolution

25th November, 1946

Legal Document No 104

The Congress Working Committee has decided to send a deputation to Kashmir to inquire into the political conditions prevailing here. This interference into the domestic politics of Kashmir is a positive proof of the fact that the Congress leaders still cherish the dream of turning Kashmir into an anti-Pakistan base. The Working Committee has complained that the Kashmir Government has not dealt with the recent affairs in a friendly manner. The people of Jammu and Kashmir are fully aware of the fact that the Congress has no genuine sympathy for them. The tears they are shedding for Kashmiris are those of crocodile. Behind the smoke screen of the alleged atrocities of the Kashmir Government, the Hindu capitalists want to get the State into their grip, but they should note that all their efforts in this respect are bound to fail.

We do not say that Kashmir Government should ban the entry of any deputation to Kashmir, but I warn that if it gets terrified at the might of the Congress and strikes an unholy alliance with the National Conference fascists, it will have to face the terrific opposition of the Muslims. And this sinister alliance will be smashed to pieces.

I trust that the Kashmir Government would, in the interest of peace, boldly face the Congress onslaught. The Congress has obviously taken into its head to enslave whole of Muslim India. I can say it without any fear of contradiction that the sending of a delegation to Kashmir is a part of the sinister game.

The Muslims of Kashmir have warded off Pt. Nehru's invasion in 1940, 1945 and 1946. Now he is again out to make a fresh attempt and it is the duty of the Kashmir Muslims particularly and all the well wishers of the country generally to smash-up this onslaught.

106 Press Statement: Chowdhry Hamidullah Khan President Jammu and Kashmir Muslim Conference

10th May, 1947

Legal Document No 105

(Extract)

The British Paramountcy of the States has come to an end. It has been transferred to the people. No solution has so far been found out for conceding the demands of various communities living in India. If Kashmir has to keep itself aloof from carnage and bloodshed, it should lose no time in adopting a strong and bold policy. His Highness the Maharaja Bahadur should declare Kashmir independent immediately. A separate constituent assembly to frame the constitution for the state according to the wishes of the people, should be established at once. His Highness the Maharaja Bahadur will receive the cooperation of Muslims in carrying out this policy. The Muslims form 80% of the population. They are represented by the Muslim Conference. The Muslims will welcome the Maharaja Bahadur as the first constitutional ruler of independent and democratic Kashmir.

107 Statement of Acharya Kriplani, Congress President at Mujahid Manzil, Srinagar

21st May, 1947

Legal Document No 106

(Extract)

You should not worry if I fail in my Kashmir mission. You can lead a prosperous life, if your Maharaja is happy. I had a desire to see the Maharaja Bahadur also but unfortunately he has stayed at Jammu. I hope I shall get the privilege of seeing the Maharaja Bhadur. I have not come here to persuade the State to participate in the Constituent Assembly. We are always prepared to give you all possible help, whenever you require it. We shall sacrifice our lives for you. You should strengthen your organisation and pay your attention towards mutual cooperation. I appeal to the people to save the State from communal disharmony and disturbances at any cost. You should help one another irrespective of caste and creed. The Government will try to sow seeds of communal troubles in the State through its agents. But you should purge your organisation of such elements so that your State may remain immune from communal disturbances.

108 Resolution Congress Working Committee on States

15th June, 1947

Legal Document No 107

The Committee does not agree with the theory of paramountcy as enunciated and interpreted by the British Government; but even if that is accepted the consequences that flow from the lapse of paramountcy are limited in extent. The privileges and obligations as well as the subsisting rights as between the States and the Government of India cannot be adversely affected by the lapse of paramountcy. These rights and obligations have to be considered separately and renewed or changed by mutual agreement. The relationship between the Government of India and the States would not be exhausted by lapse of paramountcy. The lapse does not lead to the independence of the States.

109 Resolution Kisan Mazdoor Conference

September 5, 1947

Legal Document No 108

(Extract)

The most important national problem facing the people of Jammu and Kashmir at the present moment is whether the State should accede to India or to Pakistan. The future of the country depends on the solution of this problem. If it is solved in a right way the four million State people can live peacefully and comfortably in future; they will then also make sound progress. Otherwise the State shall have to face civil war and ruin. Five months ago meetings of the Working Committee and the General Council of the Kisan Mazdoor Conference were held at Achhabal on 6th and 7th April. A resolution was adopted in these meetings advising the Maharaja of Kashmir that after establishing friendly relations with both the Congress and the Muslim League he should declare the independence of the State and that simultaneously he should introduce complete responsible Government in the country. Things have moved with lightening rapidity during past five months. On 3rd June the British Government announce a plan of India's independence which has been accepted by both the Congress and the Muslim League. According to the plan the subcontinent has been partitioned on the very day of independence. Today the two dominions of India and Pakistan are in existence. The basic principle which guided the partition of the country according to 3rd June plan was that all the provinces and districts where Hindus are in majority have been included in the Indian Union and all those regions where Muslims are is a majority have been put together to form Pakistan. The provinces of the Punjab and Bengal have been divided into two parts each under the operation of the same principle. The district of Sylhet in Assam has also been included in the province of East Pakistan according to it.

British statesmen and the Indian politicians particularly the Congress leaders have advised the native rulers that they should join either of the two dominions and should in no case remain independent. Lord Mountbatten in his capacity as Viceroy made an important pronouncement that while deciding to accede to either dominion the Princes should take into consideration the geographical position of their respective States, that is, tile right decision for a State will be to accede to the dominion which is adjacent to it.

The Working Committee of the Kisan Mazdoor Conference has fully and carefully considered the developments of the last five months. It has also consulted the majority of the members of the General Council of the Conference. The Committee is of the opinion that there is now no alternative before the State but to join Pakistan. If she does not do so, the country and its people shall have to face immense trials and tribulations.

Hundreds of the States have already acceded to either the Indian Union or Pakistan in accordance with the principle on the basis of which the subcontinent was partioioned. At present only two of the States...Kashmir and Hyderabad...remain which have taken no decision yet. Recent developments show that these two states also cannot remain aloof for a long time and soon they shall have to decide about their future.

The overwhelming majority of Kashmir's population is Muslim. The State is contiguous with Pakistan territories. All the three big highways and all the rivers of the State go into Pakistan. For these reasons the Working Committee is of the opinion that the State should cede to Pakistan. This alone will be the natural and the right course to adopt. The state cannot remain independent; nor can it, owing to its overwhelming Muslim population and being adjacent to the Pakistan territories, accede to India. The Working Committee hold the view that the majority of the population desire to accede to Pakistan and the welfare of the 39 Lakhs of peasants and workers also lies in this.

The Working Committee appeals to all the people of the State in general, to whatever section, caste or creed they belong, and the working classes in particular that they should unanimously request the Maharaja to declare the State's accession to Pakistan.

If the Maharaja entertains any doubts about the obvious public opinion that the State should accede to Pakistan then he should order a referendum in which all adults should have the right to vote on the issue whether the State should accede to India or to Pakistan.

The Working Committee hopes that the people from all parts of the State will support this democratic method of solution so that peace is maintained and the country can progress.

110 Resolution of Kashmir Socialist Party

September 18, 1947

Legal Document No 109

(Extract)

The Kashmir Socialist party has given their best and closest consideration to the question whether the State of Jammu and Kashmir should accede to India or to Pakistan or it should remain independent. The Party is of the opinion that in view of the developments during the last few months the natural and the best course for the State to adopt would be to join Pakistan and not India. For obvious and substantial reasons the Party believes that the State cannot remain independent. After mature consideration the Party has arrived at the decision that in the best interests of the poor and backward people accesion to Pakistan is desirable. The Party impresses upon the Maharaja that without any further unnecessary delay he should make an announcement accordingly.

111 Kashmir-Pak Standstill Agreement

Telegram from Prime Minister, Kashmir State, to Sardar Abdur Rob Nishtor, States Relations Department, Karachi

12th August, 1947

Legal Document No 110

Jammu and Kashmir Government would welcome Standstill Agreements with Pakistan on all matters on which these exist at present moment with outgoing British Indian Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreement.

112 Telegram from Foreign Secretary, Government of Pakistan, Karachi, to Prime Minister of Jammu and Kashmir

15th August, 1947

Legal Document No 111

Your telegram of the 12th. The Government of Pakistan agree to have a Standstill Agreement of Jammu and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution of fresh agreements.

113 Maharaja's Accession Offer to India

Legal Document No 112

Text of letter dated October 26, J 947 from Sri Hari Singh, the Maharaja of Jammu and Kashmir to Lord Mountbatten the Governor-General of India.

My dear Lord Mountbatten,

I have to inform your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As your Excellency is aware the State of Jammu and Kashmir has not acceded to the Dominion of India or to Pakistan. Geographically my State is contiguous to both the Dominions. It has vital economical end cultural links with both of them. Besides my State has a common boundary with the Soviet Republic and China. In their external relations and Dominion of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, or whether it is not in the best interests of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into Standstill Agreement with my State. The Pakistan Government accepted this Agreement. The Dominion of India desired further discussions with representatives of my Government. l could not arrange this in view of the developments indicated below. In fact the Pakistan Government are operating Post and Telegraph system inside the State.

Though we have got a Standstill Agreement with the Pakistan Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infliter into the State at first in Poonch and then in Sialkot and finally in mass area adjoining Hazara District on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at the several points simultaneously, that it has become difficult to stop the wanton destruction of life and property and looting. The Mohara power-house which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped and makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer Capital of my Government, as first step to over running the whole State.

The mass infiltration tribesman drawn from the distant areas of the North-West Frontier coming regularly in motor trucks using Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons cannot possibly be done without the knowing of the Provincial Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated requests made by my Government no attempt has been made to check these raiders or stop them from coming to my State. The Pakistan Radio even put out a story that a Provisional Government has been set up in Kashmir. The people of my State both the Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and to great emergency of the situation as it exists, I hay" no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Domination of India. I have accordingly decided to do so and I attach the Instrument of Accession for; acceptance by your Government. The other alternative is to leave my State and my people to fee-booters. On this basis no civilized Government can exist or be maintained. The alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country.

I may also inform your Excellency's Government that it is my intention at once to set up an interim Government and ask Shaikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you, if further explanation is needed.

In haste and with kindest regards.

Yours Sincerely
Hari Singh
The Palace, Jammu
26th October, 1947.

114 Instrument of Accession of Jammu and Kashmir State

26 October, 1947

Legal Document No 113

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act 1935, shall with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir Naresh Tatha Tibbet adi Deshadhipati, Ruler of Jammu & Kashmir State, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and

I hereby declare that I accede to the Dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947, (which Act as so in force is hereafter referred to as "the Act').

I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.

I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.

The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.

Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.

Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

Hari Singh

Maharajadhiraj of Jammu and Kashmir State.

115 Acceptance of Instrument of Accession of Jammu and Kashmir State

Legal Document No 114

I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.

Mountbatten of Burma

Governor General of India.

116 Reply from Lord Mountbatten to Maharajah Sir Hari Singh

27 October 1947

Legal Document No 115

My dear Maharajah Sahib,

Your Highness's letter, dated the 26th Octobers has been delivered to me by Mr. V.P. Menon. In the special circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that. in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people. Meanwhile, in response to your Highness's appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir to help your own forces to defend your territory and to protect the lives, property and honour of your people.

My Government and I note with satisfaction that your Highness has decided to invite Sheikh Abdullah to form an Interim Government to work with your Prime Minister.

Yours sincerely,

(Sd/-) Mountbatten of Burma

117 Chief Secretariat (General Department) Emergency Administration Order No. 176-H of 1947

October 1947

Legal Document No 116

We are hereby pleased to command that pending the formation of the Interim Government as agreed upon and in view of the emergency that has arisen I charge Sheikh Mohammad Abdullah to function as the Head of the Administration with power to deal with the emergency.

Sheikh Mohammad Abdullah be sworn in by the Chief Justice or any other Judge of the High Court at Srinagar.

(Sd/-) Hari Singh,
Maharaja.

118 Emergency Council

Legal Document No 117

The Hon'ble Sheikh Mohammad Abdullah, Head of Emergency Administration.
The Hon'ble Bakshi Ghulam Mohammad, Deputy Head of Administration.
The Hon'ble Mirza Mohd. Afzal Beg, Emergency Officer, Anantnag District.
The Hon'ble G.M. Sadiq, Emergency Officer, Internal Security, Home Guards, Cultural Front.
The Hon'ble Sham Lal Saraf, Emergency Officer, Trader and Supplies.
The Hon'ble Girdhari Lal Dogra, Emergency Officer, Kathua.
The Hon'ble Sardar Budh Singh, Emergency Officer,(Goodwill Mission to Jammu).
The Hon'ble Pt. Jia Lal Kilam, Emergency Officer, Food.
Maulana Mohd. Syed, Emergency Officer, Publicity.
Kh Gu]am Moni-ud-din, Emergency Officer, Communications.
Kh. Abdul Ahad, Emergeney Officer. (Firewood, Fuel).
Soofi Mohd. Akbar, Emergency Officer, Baramulla.
Peer Mohd. Maqbool, Emergency Officer, Muzaffarabad.
Pt. Kashapa Bandhu, Emergency Officer, Refugees & Rehabilitation.
Mr. Mohi-ud-Din Hamdani, Emergency Officer, Peace Brigade.
Mr. D.P. Dhar, Secretary, Internal Security & Law and Order.
Mr. J.N. Zutshi, Private Secretary to the Head of Administration and Secretary to the Emergency Council.
Kh. Ahsan Ullah, Emergency Officer, Transport.
Mr. Mohd. Amin, Emergency Officer, Banihal.
Col. Ram Lal, Emergency Officer, Home Guards.
Col. Baldev Singh Pathania, Chief Emergency Officer, Jammu.
Col. Adalat Khan, Chief Administrative Officer, Bhadarwah.
Col. Baldev Singh Samval, Emergency Officer, Border Scouts, Jammu.

119 Proclamation of Shreeman Indar Mohinder Rairajeshwar Maharajadhiraj Shree Harisingh Ruler of Jammu and Kashmir and Dependencies

5th March, 1948

Legal Document No 118

In accordance with the traditions of my dynasty I have, from time to time, provided for increasing association of my people with the administration of the State with the object of realising the goal of full Responsible Government at as early a date as possible and in pursuance of that object have, by the Jammu and Kashmir Constitution Act of 1996 (xiv of 1996) established a Constitutional Government with a Council of Ministers, a Legislature with a majority of elected members and an independent Judiciary;

I have noted with gratification and pride the progress so far made and the legitimate desire of my people for the immediate establishment of a fully democratic constitution based on adult franchise with a hereditary Ruler from my dynasty as the Constitutional Head of an Executive responsible to the legislature;

I have already appointed the popular leader of my people Sheikh Mohammad Abdullah as the Head of the Emergency Administration;

It is now my desire to replace the Emergency Administration boa Popular Interim Government and to provide for its powers, duties and functions, pending the formation of a fully democratic Constitution.

I accordingly HEREBY ORDIAN AS FOLLOWS;

My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed Sheikh Mohammad Abdullah as the Prime Minister with effect from today.

The Prime Minister and other Ministers shall function as a Cabinet and act on the principle of joint responsibility. A Dewan appointed by me shall also be a member of the Cabinet.

I take this opportunity of giving once again a solemn assurance that all sections of my people will have opportunities of service, both civil and military, solely on the basis of their merits and irrespective of creed or community.

My Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions has been completed, to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of that area.

The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly.

The National Assembly shall, as soon as the work of framing the new constitution is completed, submit it through the Council of Ministers for my acceptance.

In conclusion I repeat the hope that the formation of a popular Interim Government and the inauguration, in the near future, of a fully Democratic Constitution will ensure the contentment, happiness and the moral and material advancement of my beloved people.

120 Proclamation Government Gazette

7th Har 2006/ 9th June, 1949

Legal Document No 119

Whereas I have decided for reasons of health to leave the State for a temporary period and to entrust to the Yuvaraj Shree Karan Singh Ji Bahadur for that period all my powers and functions in regard to the Government of the State;

Now, therefore, I hereby direct and declare the all powers and functions, whether legislative, executive or judicial which are exercisable by me in relation to the State and its Government, including in particular my right and prerogative of making Laws, of issuing Proclamations, Orders and Ordinances, of remitting, commuting or reducing sentences and of pardoning offenders, shall during the period of my absence from the State be exercisable by Yuvaraj Shree Karan Singh Ji Bahadur.

Sd/- Hari Singh
Maharajadhiraj.

121 Resolution National Conference

1950

Legal Document No 120

This meeting of the General Council of the All Jammu and Kashmir National Conference views with great concern the repeated failure of the U.N. to redress the wrongs of aggression of which the people of the State continue to be victims. This failure in its opinion is due to the continued concessions given to Pakistan by placing a premium on her intransigeance.

The indecision and unrealistic procedure adopted so far has condemned the people of the State to a life of agonizing uncertainty. The All Jammu and Kashmir National Conference is gravely concerned and cannot any longer afford to ignore the perpetuation of these conditions of doubt and frustration. In the opinion of the General Council, time has come when the initiative must be regained by the people to put an end to this indeterminate State of drift and indecision.

The General Council recommends to the Supreme National Executive of the people to take immediate steps for convening a Constituent Assembly based upon adult suffrage and embracing all sections of the people and all the Constituents of the State for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir. In this sovereign Assembly embodying the supreme will of the people of the State, we shall give ourselves and our children a constitution worthy of the traditions of our -freedom struggle and in accordance with the principles of New Kashmir.

122 Text of the Proclamation issued by the Head of the Jammu and Kashmir State

1st May, 1951

Legal Document No 121

Whereas it is the general desire of tile people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a Constitution for the State;

Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State;

And whereas terms of the proclamation of the Mal1araja dated 5 March, 1948 in regard to the convening of a n Tonal assembly as contained hi clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation;

I, Yuvraj Karan Singh, do hereby direct as follows:

A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir;

For the purpose of the said elections the State shall be divided into a number of territorial constituencies each containing a population of 40,000 or as near thereto as possible and each electing one member. A delimitation Committee shall be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency;

Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State subject of any class, is not less than twenty-one years of age on tile first day of March, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration;

The vote at the election shall tee direct and by secret ballot;

The Constituent Assembly shall have power to act notwithstanding any vacancy of the Membership thereof;

The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business;

The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

123 Speech Of the Hon'ble Sheikh Mohammed Abdullah in the Constituent Assembly

Legal Document No 122

Sheikh Abdullah

Sheikh Abdullah addressing a gathering.

(Extract)

We must remember that our struggle for power has now reached its successful climax in convening of this Constituent Assembly. It is for you to translate the vision of New Kashmir into a reality, and I would remind you of its opening words, which will inspire our labors:

"We the people of Jammu & Kashmir, Ladakh and the Frontier regions, including Poonch and Chenani Illaqas commonly known as Jammu and Kashmir State in order to perfect our union in the fullest equality and self-determination to raise ourselves and our children forever from the abyss of oppression and poverty, degradation and superstition, from medieval darkness and ignorance, into the sunlit valleys of plenty, ruled by freedom, science and honest toil, in worthy participation of the historic resurgence of the peoples of East, and the working masses of the world, and in determination to make this our country a dazzling gem on the snowy bosom of Asia, to propose and propound the following constitution of our State.'

This was passed at the 1944 session of the National Conference in Srinagar. Today, in 1951, embodying aspirations, men and women from the four corners of the state in this Constituent Assembly have become the repository of its sovereign authority. This Assembly, invested with the authority of a constituent body, will be the fountain-head of basic laws laying the foundation of a just social order and safeguarding the democratic rights of all the citizens of the State.

You are the sovereign authority in this State of Jammu and Kashmir; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation embodied ably in the American and French Constitutions, is once again given shape in our midst. I shall quote the famous words of Article 3 of the French Constitution of 1791:

"The source of all sovereignty resides fundamentally in the nation...Sovereignty is one and indivisible, inalienable and imprescriptable. It belongs to the nation."

We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decisions depends not only the happiness of our land and people now, but the fate as well of generations to come.

What then are the main functions that this Assembly will be called upon to perform?

One great task before this Assembly will be to devise a Constitution for the future governance of the country. Constitution-making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution, which should be the product of the labors of this Assembly.

Another issue of vital import to the nation involves the future of the Royal Dynasty. Our decision will have to be taken both with urgency and wisdom, for on that decision rests the future form and character of the State.

The Third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigor and determination. Our "Land to the tiller" policy brought light into the dark homes of the peasantry; but, side by side, it has given rise to the problem of the landowners demand for compensation. The nation being the ultimate custodian of all wealth and resources, the representatives of the nation are truly the best jury for giving a just and final verdict on such claims. So in your hands lies the power of this decision.

Finally, this Assembly will after full consideration of the three alternatives that I shall state later, declare its reasoned conclusion regarding accession. This will help us to canalize our energies resolutely and with greater zeal in directions in which we have already started moving for the social and economic advancement of our country.

To take our first task, that of Constitution-making, we shall naturally be guided by the highest principles of the democratic constitutions of the world. We shall base our work on the principles of equality, liberty and social justice which are an integral feature of all progressive constitutions. The rule of law as understood in the democratic countries of the world should be the cornerstone of our political structure. Equality before the law and the independence of the judiciary from the influence of the Executive are vital to us. The freedom of the individual in the matter of speech, movement and association should be guaranteed: freedom of the press and of opinion should also be features of our Constitution. I need not refer in great detail to all those rights and obligations, already embodied in New Kashmir,which are Integral parts of democracy which has been defined as 'an apparatus of social organization wherein people govern through their chosen representatives and are themselves guaranteed political and civil liberties".

You are no doubt aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of those people and government is available to us in unstinted and abundant measure. The Constitution of India has provided for a federal union and in the distribution of sovereign powers has treated us differently from other constituent units. With the exception of the items grouped under Defense Foreign Affairs and Communications in the instrument of Accession , we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavor for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also by suitable constitutional arrangements with the Union establish our right to seek and compel Federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union.

Whereas it would be easy for you to devise a document calculated to create a frame work of law and order, as also a survey of the duties and rights of citizens. It will need more arduous labor to take concrete decisions with regard to the manner in which we propose to bring about the rapid economic development of the State and more equitable distribution of our national income among the people to which we are pledged. Our National Conference avows its faith in the principal that there is one thing common to men

of all castes and creeds, and that is their humanity. That being so, the one ailment which is ruthlessly sapping the vitality of human beings in Jammu & Kashmir is their appalling poverty, and if, we merely safeguard their political freedom in solemn terms, it will not affect their lives materially unless it guarantees them economic and social justice. New Kashmir contains a statement of the objectives of bur social policy. It gives broadly a picture of the kind of life that we hope to make possible for the people of Jammu & Kashmir and the manner in which the economic organization of the country will be geared to that purpose. These ideals you will have to integrate with the political structure which you will devise.

The future political set-up which you decide upon for Jammu & Kashmir must also take into consideration the existance of various sub-national groups in our State. Although culturally diverse history has forged an uncommon unity between them; they all are pulsating with the same hopes and aspirations, sharing in each others joys and sorrows . While guaranteeing this basic unity of the State, our constitution must not permit the concentration of power and privilege in the hands of any particular group or territorial region. It must afford the fullest possibilities to each of these groups to grow and flourish in conformity with their cultural characteristics without detriment to the integral unity of the State or the requirements of our social and economic policies.

Now let us take up an issue of basic importance which involves the fundamental character of the State itself. As an instrument of the will of a self-determining people who now become sovereign in their own right, the Constituent Assembly will now re-examine and decide upon the future of the present ruling dynasty, in respect of its authority.

It is clear that this dynasty can no longer exercise authority on the basis of an old discredited Treaty. During my trial for sedition in the "Quit Kashmir" movement, I had clarified the attitude of my party when I said:

"The future constitutional set-up in the State of Jammu & Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. The set-up could only rest on the active will of the people of the State, conferring on the head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people."

On this occasion, in 1946, I had also indicated the basis on which an individual could be entrusted by the people with the symbolic authority of a Constitutional Head:

"The State and its Head represent the constitutional circumference and the center of this sovereignty respectively, the Head of the State being the symbol of the authority with which the people may invest him for the realization of their aspirations and the maintenance of their rights".

In consonance with these principles, and in supreme fulfillment of the people's aspirations, it follows that a Constitutional Head of the State will have to be chosen to exercise the function which this Assembly may chose to entrust to him.

So far as my Party is concerned, we are convinced that the institution of monarchy is incompatible with the spirit and needs of modern times which demand an egalitarian relationship between one citizen and another. The supreme test of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence monarchies are fast disappearing from the world picture, as something in the nature of feudal anachronisms. In India, too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratization has been taken up and at present hardly ten of them exercise the limited authority of constitutional heads of States.

After the attainment of complete power by the people, it would have been an appropriate gesture of good will to recognize Maharaja Hari Singh as the first constitutional Head of the State. But I must say with regret that he has completely forfeited the confidence of every section of the people. His in capacity to adjust himself to changed conditions and his antiquated views on vital problems constitute positive disqualifications for him to hold the high office of a democratic Head of the State. Moreover, his past actions as a ruler have proved that he is not capable of conducting himself with dignity, responsibility and

impartiality. The people still remember with pain and regret his failure to stand by them in times of crisis, and his incapacity to afford protection to a section of his people in Jammu.

Finally we come to the issue which has made Kashmir an object of world interest, and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves after three and a half years of tense expectancy. "Is there any solution ?" Our answer is in the affirmative. Everything hinges round the genuineness of the will to find a solution. If we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, judged by any norm of international behavior ? Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms he declared Pakistan an aggressor. Secondly, was the Maharajah's accession to India legally valid or not ? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir ? In fact, the force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets out of the State.

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly cooperate with any sound plan of demilitarization. They would withdraw their forces, only garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

These two steps would have gone a long way to bring about a new atmosphere in the State. The rehabilitation of displaced people, and the restoration of stable civic conditions would have allowed people to express their will and take the ultimate decision.

We as a Government are keen to let our people decide the future of our land in accordance with their own wishes. If these three preliminary processes were accomplished, we should be happy to have the assistance of international observes to ensure fair play and the requisite conditions for a free choice by the people.

Instead invader and defender have been put on the same plane. Under various garbs, attempts have been made to sidetrack the main issue. Sometimes against all our ideals of life and way of living attempts divide our territories have been made in the form of separation of our state religionwise, with ultimate plans of further disrupting territorial integrity. Once an offer was made to police our country with Commonwealth forces, which threatens to bring in Imperial control by the back door. Besides the repugnance which our people have however, to the idea of bringing foreign troops on their soil, the very presence of Commonwealth troops could have created suspicions among our neighbors that we were allowing ourselves to be used as a base of possible future aggression against them. This could easily have made us into a second Korea.

The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States when determining future affiliations. A State can either accede to India or accede to Pakistan, but failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our State. While the intention of the British Government was to secure The privileges of the Princes, the representatives of the people must have the primary consideration of promoting the greatest good of the common people. Whatever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent. Judged by this supreme considerations, what are the advantages and disadvantages of our State's accession to either India or Pakistan or of having and independent Status.

As a realist I am conscious that nothing is all black or all white, and there are many facts to each of the propositions before us. I shall first speak on the merits and demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's peoples' freedom. The autocratic rule of the Princes has been done away with and representative

government have been entrusted with the administration. Steps towards democratization have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and above all built up their very independence of spirit. Naturally, if we accede to India there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years the Government of India has never tried to interfere in our internal autonomy this experience has strengthened our confidence in them as a democratic State.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial division if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throw back to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, color caste and class.

The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favor the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic wellbeing of the people of this State. As I said before while referring to constitution-building, political ideals are often meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and I have detailed before, we have been able to put through our "land to the tiller" legislation and make of it a practical success. Land and all it means is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through, are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that the economic reforms of ours will be tolerated. We have already heard that news of our Land Reforms has traveled to the peasants of the enemy-occupied area of our State, who vainly desire like status, and like benefits. In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods for which we are justly known all over the world, have been centered in India. The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialized than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here for instance sugar, cotton, cloth, and other essential commodities, can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of the man in-the-street depends.

I shall refer now to the alleged disadvantages of accession to India.

To begin with, although the land frontiers of India and Kashmir are contiguous, an all-weather road-link as dependable as the one we have with Pakistan does not exist. This must necessarily hamper trade and commerce to some extent particularly during the snowy winter months. But we have studied this question, and, with improvements in modern engineering, if the State wishes to remain with India the establishment of an all-weather stable system of communication is both feasible and easy. Similarly, the use of the State rivers as a means of timber transport is impossible if we turn to India, except in Jammu where the river Chenab still carries logs to the plains. In reply to this argument, it may be pointed out that accession to India will open up possibilities of utilizing our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters and laborers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber carrying trucks, river-transport is a crude system which inflicts a loss of some 20% to 35%, in transit.

Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardized. This would happen if a communal organization had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgment that the presence of Kashmir in the Union of India has been the major factor in establishing relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrase, "I lift up mine eyes into the hills, from whence cometh my help."

As I have said before, we must consider the question of accession with all open mind, and not let our personal prejudices stand in the way of a balanced judgment. I will now invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favor is that Pakistan is a Muslim State, and, big majority of our people being Muslims the State must accede to Pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life but often it leads to irrational action. Some argue, as supposedly natural corollary to this, that on our acceding to Pakistan our annihilation or survival depends. Facts have disproved this, right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this sub- continent. It has on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans at least a thousand miles apart from each other. The total population of Western Pakistan which is contiguous to our State, is hardly 15 million. While the total number of Muslims, resident in India is as many as 40 million. As one Muslim is as good as another, the Kashmiri Muslims if they are worried by such considerations should choose the forty millions living in India.

Looking at the matter too from a more modern political angle religious affinities alone do not and should not normally determine the political alliance of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State ? As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages. I have mentioned before the road and river links with Pakistan. In the last analysis, we must however remember that we are not concerned only with the movement of people but also with the movement of goods and the linking up of markets. In Pakistan there is a chronic dearth of markets for our products. Neither, for that matter, can she help us with our industrialization, being herself industrially backward.

On the debit side we have to take into account the reactionary character of her politics and State policies. In Pakistan we should remember that the lot of the States' subjects has not changed and they are still helpless and under the heel of their Rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

Another big obstacle to a dispassionate evaluation of her policies is the lack of a constitution in Pakistan. As it stands at present, this State enjoys the unique position of being governed by a Constitution enacted by an outside Parliament which gives no idea whatsoever of the future shape of civic and social relations. It is reasonable to argue that Pakistan cannot have the confidence of a freedom-loving and democratic

people when it has failed to guarantee even fundamental rights of its citizens. The right of self-determination for nationalities is being consistently denied and those who fought against Imperialism for this just right are being suppressed with force. We should remember Badshah Khan and his comrades who laid down their all for freedom, also Khan Abdus Samad Khan and other fighters, in Baluchistan. Our national movement in the State considers this right of self-determination inalienable, and no advantage, however great, will persuade our people to forego it.

The third course open to us has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland, of keeping aloof from both States but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country it could also have certain obvious advantages, but in considering independence we must not ignore practical considerations. Firstly, it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on our long and difficult frontiers bordering so many countries. Secondly we must have the goodwill of all our neighbors. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression? I would like to remind you that from August 15 to October 22, 1947 our State was independent and the result was that our weakness was exploited by the neighbor with invasion. What is the guarantee that in future too we may not be victims of a singular aggression.

I have now put the pros and cons of the three alternatives before you. It should not be difficult for men of discrimination and patriotism gathered in this Assembly to weigh all these in the scales of our national good and pronounce the well being of the country lies in the future.

124 An Act further to amend the Jammu and Kashmir Constitution Act, 1996

Act No. XVII of 2008

Legal Document No 123

Whereas it is expedient further to amend the Jammu and Kashmir Constitution Act, 1996, with a view to bring it in accord with the spirit of Proclamations dated 5th March 1948, 20th June 1949 and 20th April 1951 and the changes brought about in the actual governace of the State, in the manner hereinafter appearing:

Now, therefore, in exercise of the powers reserved under Section 5 of the J&K Constitution Act, 1996, read with the Proclamation issued by His Highness and published in the Extraordinary issue of the Government Gazette, dated 7th Har 2006, Yuvaraj Shree Karan Singh ji Bahadur is pleased to enact as follows:

Short title and Commencement .... (1) This act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2008. (2) It shall come into force at once,

Amendment of section 4, Act XIV of 1996. 2: In Section 4 of the Jammu and Kashmir Constitution Act 1996 (hereinafter referred to as the 'said act') for the words "except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Highness", the words "on the advice of the Council except in so far as may be otherwise provided by or under this Act and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make law for the State" shall be substituted.

Omission of section 5, Act XIV of 1996. 3: Section 5 of the said Act shall be omitted.

Amendment of section 6, Act XIV of 1996.4: In section 6 of the said Act for the words and figures "Subject always to the provision of sections 4 and 5 subject also to such rules of business and allocation of portfolios and such other directions as to consultations with or reports to and confirmation by His Highness on special matters as His Highness may give from time to time by general or special orders in that behalf", the words "Subject to the Proivisions of this Act" shall be substituted.

Substitution of section 7, Act XIV of 1996. 5: For section 7 of the said Act, the following section shall be substituted, namely:

"Constitution of the Council-7. The Council shall consist the Prime Minister appointed by His Highness and such other Ministers of the State as His Highness may appoint on the advice of the Prime Minister. The Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State. The Prime Minister shall be the President of the Council."

Amendment of section 9, Act XIV of 1996.6: In section 9 of the said Act, for the words "The Prime Minister may with the previous sanction of His Highness", the words "The Council may" shall be substituted.

Insertion of new sections 9-A and 9-B in Act XIV of 1996.7: After section 9 of the said Act, the following sections shall be inserted namely:

Appointment of Deputy Ministers - 9-A:

His Highness may on the advice of the Prime Minister appoint Deputy Ministers to work in such Ministeries as the Council may consider necessary.

The Deputy Ministers shall be selected from amongst the members of the Legislative Assembly.

The Deputy Ministers before entering on the duties of the office shall take an oath of office before the Prime Minister in the form set out in Schedule I.

Salaries of Ministers and Deputy Ministers - 9-B:

The salaries and allowances of Ministers shall be such as the Legislative Assembly may from time to time by Act determine and until the Legislative Assembly so determines, Ministers shall draw such salaries and allowances as they were drawing immediately before the commencement of the Legislative Assembly.

The salaries and allowance of Deputy Ministers shall be such as may be determined by the Legislative Assembly from time to time and until the Legislative Assembly so determines, the salaries and allowances of Deputy Ministers shall be as set out in Schedule II.

Amendment of section 10, Act XIV of 1996.8: After subsection (3) of section 10 of the said Act the following sub-section shall be added namely:

The Council may make rules not inconsistent with this Act is regard to the duties of the Advocate General.

Omission of section 12, Act XIV of 1996.9: Section 12 of the said Act shall be omitted.

Substitution of words "Legislative Assembly" for the words "Praja Sabha" in part III, Act XIV of 1996. 10. In Part III of the said Act, for the words "Praja Sabha" wherever they occur the words "Legislative Assembly" shall be substituted.

Substitution of section 13, Act XIV of 1996.11: For section 13 of the said Act, the following section shall be substituted namely:

"Legislature: 13

The Legislature of the State shall consist of His Highness and a House to be known as the Legislative Assembly.

Notwithstanding anything contained in this Act, the powers of the Legislative Assembly under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly set up under the Proclamation dated 20th April 1951, be exerciseable by the said Constituent Assembly and references in this Act to the Legislative Assembly shall be construed accordingly.

The Legislative Assembly may make rules and standing orders, subject to the provisions of; this Act for regulating their procedure and conduct of their business.

Until rules are made under sub-section (3), the rules of Procedure and standing orders in force in relation to the the Praja Sabha shall apply to the Legislative Assembly, subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly."

Omission of section 14, Act XIV of 1996. 12: Section 14 of the said Act shall be omitted.

Substitution of section 15, Act XIV of 1996. 13: For section 15 of the said Act, the following section shall be substituted, namely:

"Summoning of the Legislative Assembly: 15

The Legislative Assembly shall be summoned to meet at least twice in a year and more than six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

Subject to the Provisions of this section, the Speaker of the Legislative Assembly may from time to time:

(a) summon the Legislative Assembly to meet at such time and place as he thinks fit;

(b) prorogue the Legislative Assembly."

Amendment of section 16, Act XIV of 1996. 14: In section 16 of the said Act.

(i) In clause (b) the words "or any other Minister" shall be omitted, and

(ii) In clause (c) for the words "the President" the word, "the Speaker" shall be substituted.

Amendment of section 17, Act XIV of 1996. 15: In section 17 of the said Act, for the words Flue President" the words "the Speaker" shall be substituted.

Substitution of section 19, Act XIV of 1996. 16: For section 19 of the said Act, the following section shall be substituted, namely:

"Speaker and Deputy Speaker: 19.

(1) The Legislative Assembly may choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and so often as the office of the Speaker or Deputy Speaker becomes vacant, the Assembly may choose another member to be the Speaker or the Deputy Speaker, as the case may be.

Until the Legislative Assembly elects a Speaker and Deputy Speaker, as provided in sub-section(l), the President of the Constituent Assembly shall act as Speaker and Deputy Speaker of the Legislative Assembly."

Amendment of section 20, Act XIV of 1966.17: In section 20 of the said Act:

(i) sub-section (1) shall be omitted;

(ii) sub-section A shall be renumbered as sub-section (i) and in the sub-section as so renumbered.

(a) for the words 'Deputy President" the words "Deputy Speaker" and for the words "the President", wherever they occur, the words "the Speaker" shall be substituted, and

(b) the words "with the approval of the Council" shall be omitted; and

(iii) for sub-section (3) the following sub-section shall be substituted, namely:

"(2) During the temporary absence of else Speaker and the Deputy Speaker from a meeting of the

Legislative Assembly such person shall act a Speaker as may be determined by the Rules of Procedure of the Legislative Assembly or if no such person is present such other person as may be determined by the Assembly".

Amendment of section 21, Act XIV of 1996. 19: In section 2 of the said Act, for the words "Deputy President" the words "the Speaker or the Deputy Speaker" shall be substituted.

Substitution of section 22, Act XIV of 1996. 19: For section 22 of the said Act, the following section shall be substituted, namely:

"Parliamentary Secretaries-22.

(1) The Council may appoint from among the members of the Legislative Assembly as many Parliamentary Secretaries for such period and on such term and conditions as the Council may think fit.

(2) The Council may make rules not inconsistent with the provisions of this Act in regard to the duties of Parliamentary Secretaries".

Substitution of section 23, Act, XIV of 1996. 20: For section 23 of the said Act, the following section shall be substituted namely:

"Legislative power of the Legislative Assembly-23, Subject to the provisions of the Act the Legislative Assembly may make laws for the whole or any part of the State and for the State subjects, wherever they may be, except in regard to those matters enumerated in List I in the seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State."

Omission of section 24, Act XIV of 1996. 21: Section 24 of the said Act shall be omitted.

Amendment of section 25, Act XIV of 1996. 22: In Section 25 of the said Act:

(i) in sub-section (l) for the word "President" the word "Speaker" shall be substituted, and

(ii) in sub-section (3) for the words "one fifth", wherever they occur, the words "one fourth" shall be substituted.

Omission of Section 26, 27, and 28, Act XIV of 1996. 23: Sections 26, 27 and 28 of the said Act shall be omitted.

Substitution of section 30, Act, XIV of 1996. 24: For Section 30 of the said Act, the following section shall be substituted, namely:

"Allowances and Salaries: 30. The Speaker, the Deputy Speaker and the members of the Legislative Assembly shall receive such salaries and allowances as may be determined by an act of the Legislative Assembly and until that Act is passed such salaries and allowances shall be as set out in Schedule III."

Amendment of section 31, Act XIV of 1996. 25: In sub-section (3) of section 31 of the said Act, for the words "In English" the words "both in Urdu and English shall be substituted.

Amendment of section 32, Act XIV of 1966. 26: in section 320f the said Act, Act, the proviso shall be omitted.

Substitution of section 38, Act XIV of 1996.28: For section 38 of the said Act, the following section shall be substituted, namely:

"Expenditure charged on the revenues of the State - 43

The following expenditure shall be the expenditure charged on the revenues of the State:

Allowances of His Highness and other expenditure relating to his office;

Debt charges for which the State is liable including interest, sinking fund charges and Redemption charges and other expenditure relating to the raising of loans and service redemption of debt;

Salaries, allowances and pensions payable to or in respect of the Judges of the High Court and the Members of His Highness Board of Judicial Advisers;

Expenditure relating to Constituent Assembly and its staff;

Any sums required to satisfy and judgement decree or award of any court or arbitral tribunal:

Any other expenditure declared by this Act or any Act of the Legislative Assembly to be so charged."

Amendment of section 45, Act XIV of 1996.32: In Section 45 of the said Act;

(i) at the end of sub-section (1) fullstop shall be deleted, . and the following words shall be added, namely: "but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of these estimates."

(ii) Provisions to sub-section (2) shall be omitted.

Substitution of section 46, Act XIV of 1996.33: For section 46 of the said Act, the following section shall be substituted, namely:

"Supplementary Expenditure. - 46: If in respect of any financial year a further expenditure from the revenues of the State becomes necessary over and above the expenditure authorised for that year the Council shall have the power to author) se that expenditure. A statement of the Legislative Assembly along with the financial statement for the following year and the provisions of the preceding sections shall have effect in relation to that statement of the expenditure as they have in relation to the annual financial statement."

Amendment of section 48, Act XIV of 1966. 34: In sub-section (b) of section 48 of the said Act for the words' one or more Judges" the words "two or more other Judges" shall be substituted.

Amendment section 49, Act XIV of 1996.35: In section

49 of the said Act, for the figures "55" the word "Sixty" shall

be substituted and the first proviso shall be omitted.

Amendment of section 51, Act XIV of 1996. 36: In section 51 of the said Act for the words "British India" wherever they occur, the word "India" shall be substituted.

Substitution of section 72. Act XIV of 1996. 37: For section 72 of the said Act the following section shall be substituted, namely;

"Prerogative: - 72. Nothing in this Act shall derogate from the prerogative of His Highness to grant pardons reprieves, respites of remissions of punishment."

Amendment of section 75, Act XIV of 1996. 38: In section 75 of the said Act, the words "Subject to the provisions of Section 5" shall be omitted.

Omission of sections 77 and 78, Act XIV of 1996. 39 Sections 77 and 78 of the said Act shall be omitted.

125 Memorandum submitted by Shri Cheewang Rigzin, President Buddhist Association, Ladakh to the Prime Minister of India on behalf of the people of Ladakh

Legal Document No 124

Sir,

On the eve of the grant of responsible Government to the people of Kashmir by the Maharaja, we the Buddhists of Ladakh and adjoining areas presented to him through our representatives in the Praja Sabha, a memorial, a copy of which was submitted to you for your information and consideration This memorial, which was prompted by our apprehensions for our future, based on our bitter experience of nearly a century and a quarter, embodied the following proposals:

That he should govern us directly through legislative and administrative machinery, proposals for which would be submitted by us at his command.

That our homeland amalgamated with the Hindu-majority parts of Jammu should form a separate province irewhich adequate safe-guards should be provided for our distinctive rights and interests.

That we should be permitted to re-unite politically with Tibet of which land we form part and parcel for all purpose but political.

That we should be permitted to join East Punjab.

Proposal (1) originated in our respect for the obligation we owed to the ruder in view of the relation which bound us to him from the day of the conquest of our land by his great grandfather.

Proposal (2) emanated from the fact that we desired to see nothing more of the administrators from Kashmir, who had mostly governed us during the past to our utter ruin, that our Cultural kinship with the Hindus encouraged us to expect a Sympathetic regard for our interests and an assured future in a Hindu-majority province, and finally that historical causes bound us to the people of Jammu and not to those of Kashmir, for it was the Jammu Dogras who conquered Ladakh for Maharaja Gulab Singh in 1834, while Kashmir came into his possession in 1846, twelve years latter.

All things considered, however, proposals No. 1 and 2 were concessions to treaty obligations imposed on us by the Dogra conquest while proposal No. 3 which would come into force on the failure of (1) and (2) was put forward because it is the only panacea for all our ills, the only guarantee for our future progress and development.

No. 4 was a proposal of despair, for though we are in and of Tibet, the political and economic system of that land-our racial and spiritual home-are too archaic, antiquated and unprogerssive to suit us. We rather wish that India should exert her wholesome influence in the political and economic fields on her (Tibet) at the present day even as she shaped and moulded her spiritual and cultural life in ancient times.

The Maharajadhiraj has so far vouchsafed to us no reply and we have taken this silence of His Highness to imply the relinquishment by him of his position as a party in respect of proposals (1) and (2), a tacit recognition of our right to choose our path independent of him. We have given most anxious thought to this grave problem and after mature deliberation arrived at the decision that we should straightway merge with India.

That we have the right to determine our own future apart from other communities and people inhabiting the state and that we cannot be affected by the result of the forthcoming plebiscite in the evens of its being favourable to Pakistan is evident from the following facts:

We are a separate nation by all the tests-race, language, religion, culture determining nationality. The only link connecting us with the other people of the State being the bond of common ruler. If the Indian National Congress could persuade itself to recognise: the Muslims of India as a separate nation although

they had so much m common with the other elements of the Indian population, the Government of India should have no hesitation in recognition what is patent and Scout revertible fact in our case.

Sheikh Mohammad Abdullah built up his case on the validity of the Treaty of Amritsar. This treaty bears upon the territory of Kashmir only so while the ruler has consented to the transfer of his sovereign power in favour of all his people, S.Mohammad Abdullah and the people of Kashmir can, through this transference manage the affairs of their country as they will. But they have not the power to appropriate against their will a people, a separate nation, whom a separate treaty the result of the war of 1834 twelve years anterior to the treaty of Amritsar-bound to the ruler in a special relationship, in which, the people of Kashmir, who came into the picture later, naturally, did not figure at all.

The right of self-determination claimed by us cannot lie claimed with equal force by the people of Baltistan including Skardu the parts of Kargil tehsils predominantly peopled by Muslims, as they are connected by ties of religion with the majority community in Jammu and Kashmir, nor by tile people of Gilgit who came under Dogra rule through conquest after the annexation of Kashmir and whom not only identity of religion but of race as well binds to the majority community of Jammu and Kashmir. It may be added that at the time of the conquest of Ladakh by Zorawar Singh, the entire area comprised under the Tehsils of Leh and Kargil acknowledged the suzerainity of our Raja, while Baltistan had several Rajas of its own.

In case the result of the plebiscite is favourable to India, we simply go a step further than other people of the State in seeking a closer union with that great country and in case it is otherwise, our verdict stands clear and unchallengable. When we have decided to cut ourselves from the State itself, the question of our forming part of Pakistan cannot arise at all.

We have indeed made up our minds to join India; but what is our decision worth until India is prepared to accept it ? We certainly make the offer for our own advantage; we see in our merger with India the only hope of our salvation. But India, too, will not be loser by this arrangement. The Tehsil of Leh alone covers 23,000 Sq. miles and, if we add to it the other areas predominantly inhabited by Buodhs, viz. Zanskar Bodhkharbo, Mulbek, Fukar, Darcik Garcon, in Kargil Tehsil and Padar in Kishtwar, the total acquisition of territory to India not probably measure less than 33,000 Sq. miles. It is true that the whole of this area is undeveloped and most of it at present barren. But it must also be remembered that its economic potentialities are tremendous and in the hands of a great country like India it is bound to be transformed into a smiling garden and a source of immense wealth and power. Its strategic and commercial importance too cannot be underrated. The Tehsil of Leh has Tibet and China among its neighbours and the town of Leh is the nerve centre of Central Asian trade.

The British Indian Government took Gilgit on lease from the Maharaja for military reasons for no consideration in return. The Indian Government has already incurred an expense of crores of rupees for the protection of Kashmir, not to speak of the great sacrifice of military personnel which the process has involved. It is clearly impossible for Kashmir to liquidate this colossal debt which is daily growing in magmtude. Would this not be an additional reason for India to take over the Buddhist homelands hereby offered by the Buddhists themselves for its acceptance ? Though our right of self-determination stands intrinsically unassailable, we are willing to be considered as the instrument of redemption of the people of Kashmir, heretofore our fellow citizens, if that purpose can be automatically served by India's acceptance of our offer.

There is nothing in our offer which is in any way incompatable with the high idealism which characterises India's international policy. We might even say in positive terms that it is perfectly consistent with it, for has not India repeatedly declared that it stands for the right of self-determination for all nations and are we not a nation whose right of self-determination it should uphold and to whom it should extend the protection it seeks ?

Tibet is a cultural daughter of India and we of lesser Tibet seek the bosom of that gracious mother to receive more nutriment for growth to our full stature in every way. She has given us that we prize above all other things-our religion and culture and it is the experience of having been the recipients of such

precious gift which encourages us to ask for more. The Asoka wheel on her flag-symbol of goodwill for all humanity and her concern for her cultural children calls us irresistably. Will the great mother refuse to take to her arms one of her weakest and most forlorn and distressed children a child whom filial love impels to respond to the call ?

Sir, the absence of a reply to our previous references on the subject of our future has depressed us greatly. We beseech you with all earnestness to be so kind as to vouchsafe a line in reply to this our last prayer on the subject.

Before we close, we wish to make it clear that our desire to be absorbed into the body politic of India does not imply any reflection on the present National Government of Kashmir. Far from it, we have no hesitation to say that we have full confidence in the present Prime Minister, S. Mohammad Abdullah. The step we have taken has been dictated solely by the instinct of self-preservation which governs all men and nations alike, as also by the desire to find swiftly deliverance from the misery, sqalor and stagnation in which we have been sunk for generations past.

126 Interim Report of the Basic Principles Committee

1952

Legal Document No 125

Third Session,

10th June, 1952.

While proceeding with the task assigned to it, the Basic Principles Committee has felt it imperative to seek a clear directive from the Constituent Assembly with regard to the basic character and shape of the future constitution of the Jammu and Kashmir State. In order to determine its broad framework it is essential to know whether it will be based on the total application of the principles of democracy or whether the existing system of constitutional monarchy should continue. This naturally involves an immediate consideration of the future status of the Ruling dynsty of the Jammu and Kashmir State and only a decision on this fundamental issue will enable the Committee to proceed further with the task of finalizing the principles of the draft constitution.

The Committee has carefully examined the nature of the title and claim of the Ruling Dynasty of the Jammu and Kashmir State, which it derived from the Treaty of 1846. The Committee has no doubt that the Treaty was the natural consequence of the British Imperial policy in the Indian subcontinent which perpetuated and intensified feudal and autocratic rule in certain territories of the sub-continent.

When the popular upsurge for independence compelled the British Government to withdraw from the sub-continent, the Paramountcy exercised by it over these States lapsed and it was obvious that the iniquitous relationships which the 'British Government had entered into with the Indian Princes -would automatically terminate. But the failure of the British Government to recognise a status of equality and independence

On par with status conferred upon the people of the Provinces ruled by it directed, created an anamolous situation. While in the rest of India' sovereignty was restored to the people, in the Indian states, it continued to be vested in an individual who was all along functioning under the protection and suzerainty of the British Government.

The people of our State, along with those of other Indian States, resisted this relationship which condemned them to bondage and feudal exploitation. Their resentment found expression in their organised struggles against this unjust and discriminatory treatment meted out to them. They sought repudiation of this ambiguous constitutional arrangement and demanded the right of self-determination for themselves, prompted by the same urges that had moved the people in other parts of India.

The outmoded and anachronistic character of the dynastic rule was brought to light sharply by the crisis with which the State was faced in 1947. The general feeling of resentment against this autocratic system had corroded it to such an extent as left no doubt in its futility and incompetence to render elementary functions of guaranteeing the security of life and property of the citizens in times of a severe crisis. It was, therefore, natural that this unpopular system should yield place to a representative form of Government; but the nature and magnitude of the emergency facing our State made it impossible to effect any drastic changes in the constitutional set up during these critical times. The peoples representatives while tackling the difficult task of administration under stress of abnormal condition had to function within the framework of the existing constitutional set up.

There was a major change in the situation when in March 1948, the Maharaja had to entrust the work of day to day administration to a popular Ministry but it was soon obvious that this arrangement could not work smoothly and stood in the way of progress and development. Consequently, the Maharaja who was conscious of his erstwhile power and privileges, incapable of any adjustment to the changed conditions,

was forced to retire and was succeeded by Yuvaraj Karan Single, who assumed the functions of a constitutional Ruler acting on the advice and guidance of his Cabinet.

This was obviously an interim arrangement subject to examination and revision by a properly elected body of the people's representatives. Accordingly the Constituent Assembly came into being in October 1951, with sovereign powers.

The Basic Principles Committee feels that the time has come when a final decision should be taken in regard to the institu-unbounded respect, confidence and esteem of the people.

In view of these considerations the Committee feels that there must be a sense of finality about the decisions in regard to this fundamental issue. Accordingly, the Committee recommends that:

the form of the future constitution of Jammu and Kashmir shall be wholly democratic;

the institution of hereditary Rulership shall be terminated.

the office of the Head of the State shall be elective.

Sd/-
S.M. Abdullah.

G.M. Bakshi
M.A. Beg
G.L. Dogra
S.L. Saraf
D.P. Dhar
Piar Singh
Harbans Singh
Mubarik Shah
G.M. Hamdani
Mir Qasim
Bhagat Ram Sharma
Abdul Gani Goni
Ram Devi
Moti Ram Baigra
Ram Piara Saraf
Mir Assadullah

127 Resolution moved by Durga Prasad Dhar

12th June, 1952

Legal Document No 126

Third session

RESOLUTION

This Assembly resolves that the recommendations contained adopted by the Assembly be implemented and that for this purpose the Drafting Committee be directed to place before this Assembly appropriate proposals in the form of resolution or otherwise, within a period of one month from the date of passing of this resolution.

128 Resolution of the Constituent Assembly pertaining to the Head of the State

20th August 1952

Legal Document No 127

Fourth Session

RESOLUTION

Whereas this Assembly adopted the recommendations con-tained in the Interim Report of the Basic Principles Committee presented on the 10th of the June, 1952;

And whereas by its resolution, dated the 12th June 1952, this Assembly directed that the recommendations so adopted be implemented and for that purpose charged the Drafting Committee to submit appropriate proposals;

Now, therefore, in pursuance of the resolution dated the 12th June, 1952, and having considered the report of the Draft-ing Committee, this Assembly resolves:

1. (i) that the Head of the State shall be the person recognised by the President of the Union on the recommendations of the Legislative Assembly of the State;

(ii) he shall hold office during the pleasure of the President;

(iii) he may, by Writing under his hand, addressed to President, resign his office;

subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.

Provided that he shall notwithstanding the expira-tion of his term, continue to hold the office until his successor enters upon his office;

that the recommendation of Legislative Assembly of the State in respect of the recognition of the Head of the State specified in sub-pare (i) of paragraph I shall be made by election;

that the method of election to, qualifications for and all other matters pertaining to the office of the Head of the State shall be prescribed, in the Constitution, and until these are so prescribed, shall be as set out in the rules contained in the schedule annexed to this reso-lution;

4. that the Head of the State shall be designated as the Sadar-i-Riyasat;

5. that the Sadar-i-Riyasat shall be entitled to such emoluments, allowances and privileges as may be prescribed in the Constitution and pending the framing of the Constitution to such emoluments, allowances and privileges as may be decided by this Assembly by separate resolution;

6. that the Sadar-i-Riyasat shall exercise such powers and perform such functions as may be prescribed in the Constitution to be framed by this Constituent Assembly, and until such Constitution is framed, he shall exercise such powers and perform such functions as have hitherto been exercised by His Highness under the Jammu and Kashmir Constitution Act 1996, as amend-ed by Act No. XVII of 2008;

7. that in the event of the occurrence of a casual vacancy in the office of the Sadar-i-Riyasat by reason of his death, resignation or otherwise, the powers and func-tions exercisable by the Sadar-i-Riyasat shall until the assumption of office by the newly elected Sadar-i-Riy.lsat in accordance with the procedure laid down in this resolution, be exercised and performed by the person recommended by tile State Government for reck gnition as Officiating Sadar-i-Riyasat to the Presi-der.t of India; and

8. that this Assembly shall in due course provide a suita-ble remedy in respect of violation of the Constitution or gross misconduct by the person for the time being holding the office of the Sadar-i-Riyasat.

This Assembly further resolves:

that the Prime Minister of Jammu and Kashmir State is authorized to communicate a copy of this resolution to the Government of India for favour of appropriate action to enable its being given effect to.

129 Report of the Drafting Committee

20th August, 1952

Legal Document No 128

Fourth Session

This Assembly unanimously adopted the recommendations contained in the Interim Report of the Basic Principles Committee with regard to the future Headship of the State on the 12th June, 1952, and directed the Drafting Committee to place before this House appropriate proposals in this behalf within a period of one month. As it was necessary to have correspond-ing adjustments made in the Indian Constitution, it became essential to have consultations with the Government of India on this subject. Therefore, a Delegation headed by the undersigned, the Chairman of the Drafting Committee, was deputed to Delhi for the purpose.

During the course of consultations, certain other matters cropped up besides the question of the future Headship of the State. All these matters and the agreements arrived at between the Government of India and the representatives of the Kashmir Government have been placed before this House in a statement made by the Leader of the House and have been approved by this Assembly.

It was on account of these consultations at Delhi that the Drafting Committe could not submit its proposals within the period prescribed in the above mentioned resolution of this Assembly, and the Chairman requested you, Sir, for extension

of the time limit in order to complete the task assigned to the Drafting Committee. I am extremely grateful to you, Sir, that you very kindly agreed to put my request before the House.

Accordingly, I now seek the permission to present this report with the resolution and the schedule attached to it.

(Sd.) M.A. BEG
(Sd.) All Members of the Drafting Committee

Dated:
19th August, 1952.

130 Bill to amend the Constitution Act

1996

Legal Document No 129

Be it enacted by the Constituent Assembly as follows:

1. Short title....(l) This Act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2009.

2. It shall come into force on the 17th of November, 1952.

3. Amendment of section 3, Act XIV of 1996 Clause (c) of section 3 of the Jammu and Kashmir Constitution Act, 1996 (herein after referred to as "the said Act") shall be omitted.

4. Substitution of section 4, Act XIV of 1996....For section 4 of the said Act the following section shall be substi-tuted, namely:

5. "Sadar-i -Riyasat….

1. The Head of the State shall be designated as "Sadar-i-Riyasat".

2. All rights, authority and Jurisdiction which apper-tain or are incidental to the Government of the territories of the State of Jammu and Kashmir shall be exercisable by the Sadar-i-Riyasat on the advice of the Council except in so far as may be otherwise provided by or under this Act, and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State.

3. Election and term of office of the Sadar-i-Riyasat and all other matters pertaining to the office of the Sadar-i-Riyasat shall be regulated in accordance with the Resolution of the Constituent Assembly dated the 21st of August, 1952, which Resolution is set out in Schedule I.

4. Amendment of a number of sections by substitu-tion of "Sadar-i-Riyasat" for "His Highness" in Act XIV of 1996...In Sections 7,8,9....A sub-section (1), no sub-sections (1) and (3), 11, 13 sub-section (1), 16, 17, 31 sub-sections (1) and (2) 38. 43 clause (a), 48 sub-section (b), 49,52,53,57, 58,64 sub-section (1), 67 sub-section (2) and 71 of the said Act, for the words "His Highness" where-ever occuring, the words "the Sadar-i-Riyasat" shall be substituted.

5. Amendment of sections 8,9-A, 53 and 71, Act XIV of 1996....In sections 8, 9-A, 53 and 71, for the word and figure ' Schedule 1" wherever occur-ring, the word, figure and letter "Schedule I-A" shall be substituted.

6. Amendment of sections 37 and 43 (c) heading of section 71 and schedule I, Act XIV of 1996....In sections 37 and 43 clause (c), the heading to section 71 and form C of Schedule I (now to be renum-bered as I-A) of the said act for the words "His Highness" "Board of Judicial Advisers" the words "Board of Judicial Advisers" shall be substituted.

7. Addition of new section 46-A, Act XIV of 1996…. After section 46 of the said Act, the following section shall be added, namely:

"46-A votes on account, votes of credit of and exceptional grants.

(1) Notwithstanding anything in the forego-ing provisions of this Act, the Legislative Assembly shall have power:

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pend-ing the completion of the procedure prescribed in section 45 for the voting of such grant;

(b) to make a grant for meeting on unex-pected demand upon the revenues of the State when on account of magni-tude or the indefinite character of the service the demand cannot be stated with details ordinarily given in an Annual Financial Statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year.

(2) The provisions of section 45 shall have effect in relation to the making of any grant under sub-section (1) as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the Annual Financial Statement.

8. Amendment of section 55, Act, XIV of 1996 .... In section 55 of the said Act, the words "shall run and be in the name and style of His Highness and" shall be omitted.

9. Amendment of section 66, Act XIV of 1996....In section 66 of the said Act, for the words "the commands of His Highness" the words "orders of the Sadar-i-Riyasat" shall be substituted and for the words "His Highness" where they occur for the second time the words "the Sadar-i-Riyasat" shall be substituted.

10. Amendment of section 72. Act XIV of 1996 .... In section 72 of the said Act:

(i) the heading "Prerogative" to the section shall be omitted; and

(ii) for the words "Prerogative of His Highness" the words "Powers of the Sadar-i-Riyasat" shall be substituted.

11. Substitution of new section for section 73, Act XIV of 1996....for section 73 of the said Act, the following section shall be substituted namely:...

"Revenues of the Jammu and Kashmir State-73... All revenues and public monies raised or rece-ived by or on behalf of the Jammu and Kash-mir Government shall be received for and credi-ted to the account of the Jammu and Kashmir State.

Explanation: The expression "revenues" includes:

(a) all fines and penalties incurred by the sentence or order of any court of justice in the State, and all forfeitures, for crimes, of any movable or immov-able property in the State; and

(b) all movable and immovable property in the State escheating or lapsing for want of an heir or succes-sor and all property in the State devolving as bona vacantia, for want of a rightful owner."

12. In section of a new Schedule in Act XIV of 1996:

Schedule I of the said Act shall be renumbered as Schedule I-A and before the said Schedule as so renumbered, the following Schedule shall be inser-ted namely:

1. Qualifications .... No person shall be eligible for elections to the office of the Sadar-i-Riyasat, un-less he:

(a) is a State Subject of Class I as defined in the State Subject Definition Notification. No. I-L/ 84, dated 20th April, 1927

(b) has completed the age of 2I years on the date of filing the nomination paper; and

(c) is not subject to any of the disqualifications specified in rule 4 of the Jammu and Kashmir Constituent Assembly Election (Part I) Rules, 2008, for being chosen as a member of the Constituent Assembly.

2. The Sadar-i-Riyasat shall not be a member of the Legislative Assembly of the State, of if a member of the Legislative Assembly of the State, he shall be deemed to have vacated his seat in the House on the date he enters upon his office as the Sadar-i-Riyasat.

3. The Sadar-i-Riyasat shall hold no other office of profit.

4. Method of Election...(i) When election to the office of the Sadar-i-Riyasat becomes necessary, the Spea-ker of the State Legislative Assembly shall fix time and date for the holding of the election and shall cause a notice thereof to be sent to every member.

(1) At any time before noon on the date preceding the date so fixed, any member of the State Legislative Assembly may nominate another person for election by delivering to the Speaker or any officer authorised by the Speaker in this behalf, a nomination paper in the form prescribed in the Annexure to this Schedule signed by himself as proposer and by another member as seconder.

(2) Any person who has been so nominated may withdraw his candidature in writing addressed to the Speaker at anytime before the Assembly proceeds to hold the election.

(3) At the time fixed for selection under sub-clause (i), the Speaker or in his absence the person presiding shall read out to the Assembly the names of the persons who have been duly nominated and have not withdrawn their candidature together with those of their proposers and seconders, and, if there is only one such candidate, shall declare him to be duly elected. If there is more than one such candidate, the Assembly shall proceed to elect the Sadar-i-Riyasat by ballot.

(4) Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the Speaker or in his absence the person presiding shall exercise his casting vote and the person in whose favour such vote is cast shall be declared elected.

(5) Where more than two candidates have been nominated and at the first ballots no candidate obtain more votes than the aggregate votes obtained by the other candi-dates, the candidate who has obtained the smallest number of votes shall be excluded from the election. and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded" from the election, until one candidate obtains more votes than the remaining candidates, or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected.

(6) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under sub-clause (6), the determination, as between the candidates whose votes are equal, of the candidate who is to be excluded shall be by the casting vote of the Speaker or in his absence of the person presiding.

(7) The Prime Ministers of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-i-Riyasat to the President of India for being recognised as the Sadar-i-Riyasat.

(8) Oath .... The Sadar-i-Riyasat shall, before entering upon his office, make and subscribe in the presence of Chief Justice of the State High Court or in his absence any judge of the High Court available on oath or affir-mation in the following form, namely:

"I, A. B.. swear in the name of God/solemnly affirm that I will faithfully execute the office of the Sadar-i-Riyasat. Jammu and Kashmir and will to the best of my ability preserve, protect and defend the Constitution of the State as by law established and that I will devote myself to the service and well being of the people of the State."

131 Sheikh Mohammad Abdullah's Statement to the Constituent Assembly on Delhi Agreement

11th August, 1952

Legal Document No 130

(Extract)

I crave permission to mace a statement before the House in regard to the constitutional relationship between the Jammu and Kashmir State and the Indian Union. As the Hon'ble Members are aware, during the last session of the Constituent Assembly, the Basic Principles Committee had submitted a report making certain specific recommendations about the future Head of the State. The House, while accepting these recommendations, had charged the Drafting Committee to present for the consideration of the Assembly, a draft resolution incorporating the proposed principles for the election of the Head of the State. The Drafting Committee will, no doubt, submit its report to the House during this session.

Since the changes proposed by this Assembly involved corresponding adjustments in the Indian Constitution, the Government of India desired that it should have time to discuss with our representatives other matters pertaining to the cons-titutional relationship of our State with the Union. During the last stage of these discussions, it became necessary for me and some of my other colleagues in the Government to participate in the talks. I am now in a position to inform the House that certain broad principles have been laid down and certain decisions have been tentatively arrived at between the two Governments.

X X X

The basis of our relationship with India is the Instrument of Accession which enabled our State to enter into a lemon with India. In accordance with the terms of the Instrument, certain powers were transferred to the Centre. The principal matters specified for this purpose in respect to which the Dominion Legislature could make laws for this State were:

(a) Defence,

(b) External Affairs, and

(c) Communications.

This arrangement involved a division of sovereignty which is the normal feature of a Federation. Beyond the powers transferred by it to the Dominion, the State enjoyed complete residuary sovereignty.

These terms of the association of our State with the Domi-nion of India were maintained; and, subsequently, when the Constituent Assembly of India was charged with the task of framing a Constitution, this over-riding consideration was kept m view in determining the position of this State in the pro-posed Constitution Earlier to this, it had been agreed between the two Governments that "in view of the special problems arising in respect of this State and the fact that the Govern-ment of India have assured its people that they would them-selves finally determine their political future", a special position should be accorded to Jammu and Kashmir in the future Con-stitution so that a limited field of the Union Powers over the State is ensured. Dour representatives were nominated from the Jammu and Kashmir State to the Constituent Assembly of India] These representatives participated in the deliberations of the Constituent Assembly of India at a time when the bulk of the Indian Constitution had already been adopted. It was at this stage that the constitutional position of this State was determined in the Constitution of India. The representatives of the Jammu and Kashmir State reiterated their view that our association with India should be based on the terms of the Instrument of Accession. It was at this stage that the constitu-tional position of the State was determined in the Constitution of India. Lithe representatives of the Jammu and Kashmir State reiterated their view that our association with India should be based on the terms of the Instrument of Accession. It was also made clear that while the accession of the Jammu and Kashmir State with India was complete in fact and law to the extent of the

subjects enumerated in this Instrument.. the auto-nomy of the State with regard to all oilier subjects outside the ambit of the Instrument of accession should be preserved.

X X X

Evince a good deal of confused thinking and uninformed cri-ticism is indulged in by some interested people. I would like to point out here that the Constitution has confined the scope and jurisdiction of the Union powers to the terms of the Instru-ment of accession with the proviso that they may be extended to such other matters also as the President may by order specify with the concurrence of the Jammu and Kashmir Con-stituent Assembly. The special problems facing the State were thus taken into account and under the Constitution the rela-tionship approximated to that subsisting under the Instrument of accession.

The Constitution of the Indian Union, therefore, clearly envisaged the convening of a Constituent Assembly for the Jammu and Kashmir State which would be finally competent to determine the ultimate position of the State in respect of the sphere of its accession which would be incorporated as in the shape of permanent provisions of the Constitution

X X X

The Hon'ble Members are aware that as the leader of the National Conference party, I indicated in my inaugural address the scope of the decisions which I felt the Constituent Assembly would have to take. I listed the four main issues as pertaining to the main functions of the Assembly, viz., the future of the Ruling Dynasty, payment of compensation for the land trans-ferred to cultivators under the Big Landed Estates Act, Ratifi-cation of the State's Accession to India as well as the framing of a Constitution for the State. While discussing these issues in my address to this House, I had given clear indications of my party's views in regard to them. I had also an occasion to place my point of view on these issues before the representatives of the Government of India and I had the satisfaction that they approved of it.

When Constituent Assembly commenced its labours, it had to tackle these issues in course of time. It took decisions m regard to payment of compensation to landlords and it came to the conclusion that no compensation was justified.

The Constituent Assembly has, at present, under its consideration the future of the Ruling Dynasty. In this connection the Basic Principles Committee recommended that the institu-tion of hereditary rulership in the State should be abolished and in future the office of the Head of State should be elective. While accepting the recommendations of the Basic Principles Committee, this Assembly charged the Drafting Committee to place before this House appropriate proposals for the imple-mentation of these recommendations.

As I said in the beginning of my statement, such a funda-mental decision involved corresponding adjustments in the Indian Constitution and in order to finalist the position in respect of this issue and other matters pertinent to it, I and my colleagues had discussions with the representatives of the Government of India as a result of which we arrived at some tentative agreement, tile details of which I wish to place before the House.

The Government of India held the view that the fact that the Jammu and Kashmir State was constituent unit of the Union of India led inevitably to certain consequences in regard to some important matters, namely:

(a) Residuary Powers, (b) Citizenship, (c) Fundamental Rights, (d) Supreme Court of India (e) National Flag, (f) The President of India, (g) The Headship of the State (h) Financial Integration, (i) Emergency Provisions, and (j) Conduct of elections to Houses of Parliament.

Permit me, Mr. President now to deal with each one of these Items and also the agreement, arrived at between the Jammu and Kashmir Government and the Government of India in relation to them.

RESIDUARY POWERS

It was agreed that while under the present Indian Constitu-tion, the Residuary Powers vested in the Centre in respect of all the States other than Jammu and Kashmir, in the case of our State, they rested in the State itself. This position is compatible with Article 370 of the Indian Constitution and the instrument of

Accession on which this article is based. We have always held that the ultimate source of sovereignty resides in the people. It is, therefore, from the people that all powers can flow. Under these circumstances, it is upto the people of Kashmir through this Assembly to transfer more powers for mutual advantage to the custody of the Union Centre.

CITIZENSHIP

It was agreed that in accordance with Article 5 of the Indian Constitution persons who have their domicile in the Jammu and Kashmir State shall be the citizens of India. It was fur-ther agreed that the State legislature shall have power to define and regulate the rights and privileges of the permanent residents of the State, more especially in regard to acquisition of immo-vable property, appointments to services and like matters. Till then the existing State law would apply. It was also agreed that special provision should be made in the laws governing citizenship to provide for the return of those permanent resi-dents of Jammu and Kashmir State, who went to Pakistan in connection with the disturbances of 1947 or in fear of them as well as of those who had left for Pakistan earlier but could not return. If they returned, they should be entitled to the rights, and privileges and obligations of citizenship.

There are historic reasons which necessitate such constitu-tional safeguards as for centuries past, the people of the State have been victims of exploitation at the hands of their well to- do neighbours. The Hon'ble Members are perhaps aware that in the late twenties, the people of Jammu and Kashmir agitated for the protection of their bonafide rights against the superior competing interests of the non-residents of the State. It was in response to this popular demand that the Govern-ment of the day promulgated a Notification in 1927 by which a strict definition of the term "State Subject" was provided. I am glad to say that the Government of India appreciated the need for such a safeguard. No definition of the special rights and privileges of the residents of the State can afford to remain static. The need may arise at one stage or the other to libe-ralise such a definition. The importance of the fact that State Legislature shall retain powers to be able to effect such modi-fications becomes obvious in this context.

There is yet another class of State Subjects whose interests had to be safeguarded. The Hon'ble Members of this House are aware that on account of the disturbances of 1947 and also as a consequence of the invasion of this country bv Pakistan large number of the residents of this State suffered dislocation. We have, therefore, to visualize the possibility of their return to their homes and hearths as soon as normal con-ditions are restored. It has been suggested in certain quar-ters that this protection has been provided only for those resi-dents of the State who are at present stranded in Pakistan I would like to make it clear, as I have stated earlier, that this protection will operate only when the conditions are normal and such conditions naturally presume that the resettlement of the dislocated population, whether Muslim or Non-Muslim cannot be one-sided or unilateral.

FUNDAMENTAL RIGHTS

It is obvious that while our constitution is being framed the fundamental rights and duties of a citizen have necessarily got to be defined. It was agreed, however, that the Funda-mental Rights, which are contained in the Constitution of India could not be conferred on the residents of the Jammu and Kashmir State in their entirety taking into account the economic, social and political character of our movement as enunciated in the New Kashmir Plan. The need for providing suitable modifications, amendments and exceptions as the case may be in the Fundamental Rights Chapter of the Indian Cons-titution in order to harmonize those provisions with the pattern of our principles was admitted. Particular care would have to be taken to preserve the basic character of the decisions taken by this House on the question of land compensation as well as the laws relating to the transfer of land to the tiller and other matters; The main point to be determined is whether the Chapter of our Fundamental Rights should form a part of the Kashmir Constitution or that of the Union Constitution.

SUPREMENT COURT

It was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in Article 131 of the Constitution of India. It was further agreed that the Sup-reme Court should have jurisdiction in regard to Fundamen-tal Rights which are agreed to by the State.

O n behalf of the Government of India, it was recommended that the Advisory Board in the State, designated "His High-ness's Board of Judicial Advisors" should be abolished and the jurisdiction exercised by it should be vested in the Suprement Court of India. That is to say that the Supreme Court should be the final Court of appeal in all civil and criminal matters as laid down in the Constitution of India.

We, however, felt that this would need a detailed exami-nation and consequently it was agreed that we should have time to consider it further.

NATIONAL FLAG

We agreed that in view of the clarifications issued by me in my public statements while interpreting the resolution of this House according to which the old State flag was in no sense a rival of the National Flag. But for historical and other reasons connected with the freedom struggle in the State, the need for the continuance of this flag was recognized. The Union flag to which we continue our allegiance as a part of the Union will occupy the supremely distinctive place in the State.

PRESIDENT OF INDIA

It was agreed that the powers to grant reprieve and com-mute death sentences, etc. should also belong to the President of the Union.

HEADSHIP OF THE STATE

I am glad to inform this House that the Government of India have appreciated the principle proposed by the Basic Principle Committee as adopted by this Assembly in regard to the abolition of the hereditary rulership of the State. In order to accommodate this principle, the following arrange-ment was mutually agreed upon:

i. The Head of the State shall be the person recognized by the President of the Union of the recommendation of the Legislature of the State.

ii. He shall hold office during the pleasure of the President.

iii. He may, by writing under his hand addressed to the President resign his office.

iv. Subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.

v. Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

FINANCIAL INTEGRATION

In regard to this subject, we agreed that it would be necessary to evolve some sort of financial arrangement between the State and the Indian Union. But as this involved far reaching consequences, it was felt that a detailed and objective examination of this subject would be necessary.

EMERGENCY POWERS

On behalf of the Government of India, it was stated that the application of Article 352 of the Constitution was necessary as it related to vital matters affecting the security of the State. They did not press for the application of Articles 356 or 360.

On behalf of the Kashmir Delegation, it was stated that the application of Article 352 to the State was not necessary. In the event of war or external aggression, item I in the Seventh Schedule relating to the defence of India applied and the Government of India would have full authority to take any steps in connection with defence, etc. In particular, we were averse to internal disturbance being referred to in this connection, as even some petty internal disorder might be considered sufficient for the application of Article 352'.

In reply it was pointed out that Article 352 could only be applied in a state of grave emergency and not because of some small disorder or disturbance.

In order to meet our view point, it was suggested on behalf of the Government of India that Article 352 might be accep-ted as it is with the addition at the end of the first paragraph (1) of the following words: "but in regard to internal distur-bance at the request or with the concurrence of the Government of the State."

We generally accepted this position, but wanted some time to consider the implications and consequences as laid down in Articles 353, 358 and 359 which on the whole we accepted. In regard to Article 354, we wanted to examine it further before expressing our opinion.

CONDUCT OF ELECTIONS TO HOUSES OF PARLIAMENT

Article 324 of the Indian Constitution already applies to State in so far as it relates to elections to Parliament and to the Offices of the President and the vice-President of India.

I have put before this House the broad indications of the agreements arrived at between us and the Government of India. As the Hon'ble Members will, no doubt, observe, the attitude of the Government of India has been most helpful. A satisfactory position has emerged and we are now able to assess the basic issues of our constitutional relationship with India in clearer terms. There has been a good deal of accom-modation of our respective points of view. Hotly the repre-sentatives of the Government of India and the Kashmir Dele-gation, have been impelled by the desire to strengthen further the existing relationship to remove all obscurity and vagueness. We are convinced, as ever before, that we have the full support both of the Government and the people of India in the fulfill-ment of our democratic ideals and the realization of our objectives.

132 Joint Memorandum submitted by Cabinet Members of the Sheikh Abdullah Ministry to the Sadar-i-Riyasat

8th August, 1953

Legal Document No 131

You will kindly recall that in the course of tile meeting of the Cabinet, held on August 7, 1953, and on many other occasions previously, we brought to your notice that certain pronounced tendencies indicating a very sharp divergence of opinion had become manifest in our approach to the broad policies which from the basis of the Government and the administration. Contrary to the normal practice of a uniform policy in the conduct of the administration, it has become increasingly clear that Mr. Beg and you, in utter disregard of the opinion of your colleagues and without their consultation make public pronouncements which flout to principle of joint responsibility. Since the formation of the present Government, in spite of the constant endeavour of your colleagues to secure maximum agreement and unity in the formation and execution of essential policies in accordance with the mandate given by the people, you have frequently adopted certain arbitrary meas-ures complete denial of the right of expression of opinion of even your own colleagues in the handling both of external and internal affairs of the State.

Most of these measures and policies have been self-contra-dictory and inconsistent, leading to serious complications. After the establishment of the Legislative Assembly, we have expected that our joint responsibility and collective function-ing as a Cabinet would be governed by well-established parlia-mentary practices. But we regret to observe that you have not only disregarded the wishes of your colleagues in the Cabinet but have acted in the Legislative Assembly also in a manner which denied the right of freely expressing their opinions to the representatives of the people in regard to the basic policies

pursued by the Government. In the past, even though occasions have arisen when we seriously opposed certain measures which affected the efficient and smooth functioning of the administration we refrained from bringing matter to a head by making concession to y our views in the interests of secur-ing harmony and concord in the working of the Government. Unfortunately, however, this spirit of accomodation has been misconstrued by you and you have consequently adopted an attitude which is far from democratic and indicates a tendency towards making arbitrary use of power and position. Your attitude with regard to the political and economic policies of the Government has given rise to a great deal of confusion in the public mind and serious dislocation in economic life of large sections of the people. For quite some time, now, a factional tendency has been evident in the Cabinet, which has been responsible for a progressive deterioration in the admini-stration. Consequently, various ameliorative measures propos-ed by the members of the Cabinet in good faith have not been implemented honestly. Above all, there has been a singular failure to exercise vigilance and proper supervision in the day to day functioning of the administration which has produced corruption, nepotism, inefficiency and wanton wastage of pub-lic resources in most sphere of Government activity. All these facts of omission and commission have inevitably created large-scale discontent in various part of the State.

All along the Government has lacked a sense of uniformity and direction in its plans and programme. Time and again, we have brought to your notice the imperative need of arres-ting this process of deterioration in the administration. We attempted to represent the feelings of various sections of the people and urgent necessity of undertaking immediate measu-res for the amelioration of these conditions. But we regret to say that you not only disregarded all our opinions in this respect, but have been ignored the recommendations of the Wazir Committee, which had been set up by the Government to inquire into a number of grievances of the people.

Consequently, the political uncertainty has been accentua-ted with the result that our economy has been thrown Into stagnation, which has impoverished large masses of people, when the tourist traffic showed

healthy improvement last year and this year, you destroyed public confidence though your irresponsible utterances.

The events of the last few months have, in particular, thrown the state in the midst of a severe crisis. The repercus-sions of this crisis are bound to be serious and far-reaching. We regret to state that yore, as the head of the Government, have not only failed to take note of the situation but have, by your words and deeds. accentuated the tension. you have consistently refused to acknowledge responsibilities that devolve on you as the Prime Minister of the State by not following the declared policies that form the basis of the Government. You have tended to act in a manner that 1las generated uncertainty, suspense and doubt in the minds of the people of the State in general and of those in Jammu and Ladakh in particular. All these factors have combined to strengthen the disruptionist forces seeking the disintegration of the State,

As is well known, the unprovoked aggression from Pakis-tan had put our very national existence at stake. In that critical hour of crisis, all of us jointly approached India for help and requested her to accept the accession of the State and assist us in repelling the aggression and restoring peaceful conditions in the State. The united will of the people stood solidly behind this act of Kashmir's accession to India. While accepting our request, the Government of India assured us of the right of self-determination for our people. After the convening of the Constituent Assembly, certain inescapable elaborations of the State's relationship with India were defined in the Delhi Agreement, of which you were the Chief Architect on our behalf. Your stand was unanimously endorsed by the Govern-ment, the National Conference, the Indian Parliament and the Constituent Assembly of the State. But you have not only deliberately delayed implementation of the agreements on these matters which form the sheet-anchor of our policy, but have purposefully and openly denounced these in public. You have thus arbitrarily sought to precipitate a rupture in the relationship of the State with India. Though it is true that the people of the State have the ultimate right to decide their future, the conditions of chaos and confusion which are being engineered today by you are bound to be fatal for the exer-cise of the right of self-determination by our people. Under these circumstances what seems inevitable is that interested foreign powers may well take advantage of and exploit the situation for their own selfish purpose. Mr. M.A. Beg has persistently been following policies of narrow sectarianism, and communalism, which have seriously undermined the the oneness of the State. Unfortunately, you have been lending your support to his policies in the Cabinet and his activities in public. This has generated bitter feelings of suspicion and doubt in the minds of the people of various constituent units of the State. You have connived at all these unfortunate happenings and thus strengthened and encouraged the forces of disruption. The result is that unity and the secular character, the two fundamental aspects of our State, stand threatened today.

We have been constantly urging upon you to put an end to these unhealthy tendencies and to under take unitedly -measures for restoring the moral of the people. In spite of our best intentions, we have failed in our efforts.

It is, therefore, with great pain that we have to inform you of our conclusion that the Cabinet, constituted as it is at present and lacking as it does the unity of purpose and action, has lost the confidence of the people in its ability to give them a clean, efficient and healthy administration.

133 Sadar-i-Riyasat's letter to Sheikh Abdullah

Legal Document No 132

Karan Mahal,
Srinagar,
August 8, 1953.

My dear Sheikh Abdullah,

You will recall that in the course of our meeting today, I conveyed to you my deep concern at the serious differences which exist in your Cabinet. I impressed upon you the im-mediate necessity for restoring harmony and unity or purpose among the members of the Cabinet in the execution of its policies. You were, however, unable to assure me that these acute differences could be remedied.

This conflict within the Cabinet has for a considerable time been causing great confusion and apprehension in the minds of the people of the State. The situation has reached an unprecedented crisis with the effect that three or your four Cabinet colleagues have, in a memorandum to you, a copy of which they have sent to me, expressed their complete dissatis-faction with your action and policies, which have lost the present Cabinet and confidence of the people. This document clearly indicates that the divergence with in your Cabinet has reached proportions in which the unity prosperity and stability of the State are gravely jeopardised.

When we met today, I further suggested to you that an emergency meeting of the cabinet should be held at my residence this evening so that we could jointly explore the possibilities of securing a stable, unified and efficient Government for the country. But to my regret you evaded the issue.

Under these conditions, I, as Head of the State, have been forced to the conclusion that the present Cabinet cannot conti-nue in Office any longer and hence, I regret to inform you that I have dissolved the Council of Ministers headed by you A copy of my order in this connection is attached herewith.

I need hardly add how deeply distressed I was at having to take this action, but the vital interests of the people of the State, which it is my duty to safeguard, leave me no alternative. I trust that this will in no way affect the mutual regard and cordial feelings we have for each other.

Yours sincerely,
(Sd/-) Karan Singh
Sadar-i-Riyasat

134 Order Issued by the Sadar-i-Riyasat

August 8, 1953

Legal Document No 133

Where as for some months I have been noticing with growing concern that there have existed acute differences of opinion between members of the Government on basic issues - political, economic and administrative-affecting the vital interests of the State;

And whereas members of the Government have been publicly expressing sharply conflicting points of view regarding these matters;

And whereas on these fundamental issues the view of a majority of the members the Cabinet are sharply opposed to the view held by the Prime Minister and one of his colleagues;

And whereas efforts to work in harmony and pull together as a team having failed, and the majority in the Cabinet has expressed that, lacking as it does in unity of purpose and Action, the present Cabinet has lost the confidence of the people;

And whereas the economic distress of the people has considerably increased which needs prompt and serious attention;

And whereas a state has reached in which the very process of honest and efficient administration has become impracti-cable;

And whereas finally, the functioning of the present Cabinet on the basis of joint responsibility has become impossible and the resultant conflicts have gravely jeopardised the unity, prosperity and stability of the State;

I, Karan Singh, Sadar-i-Riyasat, functioning in the interests of the people of the State, who have reposed the responsibility and authority of the Headship of the State in me, do hereby dismiss Sheikh Mohammad Abdullah from the Prime Ministership of the State of Jammu and Kashmir, and consequently the Council of Ministers headed by him is dissolved forthwith.

135 Sadar-i-Riyasat's letter to Bakshi Ghulam Mohammad

August 9, 1951

Legal Document No 134

Karan Mahal,
Srinagar,
August 9, 1951.

My Dear Bakshi Sahib,

I have just dissolved the cabinet which functioned till today and have relieved it of the powers and functions of civil administration of the State. I, however, feel that a new Cabinet should be constituted immediately so as to avoid a political and administrative vacuum.

In the task of forming a new Ministry, I have decided told seek your aid and advice. Will you, therefore, make it convenient to meet me immediately so that we might discuss the formation and composition of the new Cabinet?

I need hardly and that the continuance in office of the new Cabinet will depend upon its securing a vote of confidence from the Legislative Assembly during its coming session.

Yours sincerely,
(Sd/-) Karan Singh.

136 Bakshi Ghulam Mohammad's reply to Sadar-i-Riyasat's letter

August, 9, 1953

Legal Document No 135

Srinagar
August, 9, 1953

My dear Sadar-i-Riyasat,

I am highly grateful to you for the trust you have reposed in me by calling me to offer you my aid and advice in the task of constituting a new Cabinet.

In accepting your kind invitation, I am solely guided by a sense of duty to my country, and its people and I shall try to the best of my ability to fulfill the responsibilities which you propose to entrust to me.

I shall be available for consolation at your convenience.

Yours sincerely,
G. M. Bakshi.

137 Report of the Basic Principles Committee

1954

Legal Document No 136

The basic principles of the State Constitution will contain provisions relating to the form of the State, the Executive, the Legislature, the Judiciary, the Public Service Commission, the" official Language and other ancillary matters. The recommendations of the Committee in regard to these matters are contained below:

The State of Jammu and Kashmir will comprise such territories which formed part of the State on 15th August, 1947. While retaining its autonomous character the State will continue to remain acceded with the Union of India.

The sovereignty of the State resides in the people thereof and shall except in regard to matters specifically entrusted to the Union, be exercised on their behalf by the various organs of the State.

The governing features of the State Constitution would be based on democracy, equality and social and economic justice. The guiding principle of the State policy would be to ensure the rebuilding of the State by harnessing all its resources for the purpose of securing a better and prosperous life for its people. In order to achieve that end the entire economic activity of the State will be conducted in accordance with plans envisaged in New Kashmir.

In order to satisfy the urge of the people of the State for an intimate association with administration at ail levels the Constitution shall embody suitable provisions to that effect. Suitable provision shall also be made enabling the people to develop their various cultures, languages and scripts and to promote closer association and better understanding amongst themselves.

Based on the decision of the Constituent Assembly for the termination of the Hereditary Rulership in the State, the Head of the State will be a person designated as the Sadar-i-Riyasat whose election and other terms of office will be regulated in accordance with the resolution of the constituent Assembly dated 21st August, 1952.

The superintendence, direction and control of the Government -will vest in a council of Ministers headed by the Prime Minister who will be appointed by the Sadar-i-Riyasat. The Prime Minister will tee the person who enjoys the confidence of the State Legislative Assembly. The Council of Ministers will be collectively responsible to the State Legislative Assembly.

The State Legislative Assembly will be composed of members chosen by direct election who will represent constituencies determined by law. The determination of constituencies will be on population basis and on the scale of one member for every 40,000 of the population. Election to the State Legislative Assembly shall be on the basis of adult suffrage, that is to say, every male or female who has attained the age of 18 years and is not otherwise disqualified under the constitution or any Law made by the State Legislative Assembly on grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall have the right to vote. The State Legislative Assembly will have powers to make laws for the State, in respect of all matters falling within the sphere of its residuary sovereignty. Its life will be five years. Provision for the rights, powers and privileges of the members and the Commit-tees of the Assembly should be made on the lines of the corres-ponding provisions of the Constitution of India. The superinten-dence, direction and control of all elections to to the State Legislative Assembly including the appointment of Election Tribunals will vest in a Commission to be appointed by the Sadar-i-Riyasat. Provision will also have to be made for a fixed period to promote with special care the interests of the weaker sections of the people by ensuring their representation in the Assembly.

The Judiciary of the State will be independent of executive. The High Court of Judicature shall consist of the Chief Justice and two or more other judges as the Sadar-i-Riyasat may from time to time appoint. In order to ensure the independent and impartial character of the High Court, a judge of the High Court will not be removed from his office except by an order of Sadar-i-Riyasat passed after an address by the

National Assembly supported by a majority of the total membership of the National Assembly and by a majority of the total member-ship of the National Assembly and by a majority not less than two thirds of the members of the House present and voting, has been presented to the Sadar-i-Riyasat in the same session for such removal, on the ground of proved misbehaviour or incapacity. Provisions will also have to be made for the terms and conditions of service of High Court Judges commensurate with the independence and dignity of the High Court.

The High Court will be a Court of Record and shall hare all the pokers of such Court including the power to punish for contempt of itself. The High Court shall have the same powers and jurisdiction as are exercised by it at present under the Constitution or any other law in force in the State. Pro-visions in this respect will be modelled on the those contained in the existing Constitution of the State and the relevant parts of the Constitution of India. Adequate provisions shall also be made in the Constitution for ensuring independence and integrity of the subordinate Courts.

An appeal shall lie to the Supreme Court of India from a judgement, decree or final order of the High Court in Civil proceedings if the High Court certifies that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than 90,000 rupees or that the case is a fit one for appeal to the Supreme Court. Similarly an appeal shall lie to the Supreme Court of India in criminal matters if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or has withdrawn for trail before itself any case from any subordinate court and has in such trial convi-cted the accused person and sentenced him to death and lastly if the High Court certifies that the case is a fit one for appeal to the Supreme Court. An appeal shall also lie to the Supreme Court of India in certain civil, criminal or other proceeding if-the High Court certifies that the case involves a substantial question of law as to the interpretation of the provisions of the Constitution of India which apply to the State under Article 370 of the Constitution. The original jurisdiction of the Supreme Court will extend to disputes between the Centre and State or States interest as specified in Article 131 of the Consti-tution of India.

Provision with regard to the establishment of a public Service Commission should be made in the Constitution. The appointment of its Chairman and members will be made by the Sadar-i-Riyasat. It will function independent of executive. Its Chairman and other members will be removable from office in the manner provided for the removal of a High Court judge.

The official Language of the State will be Urdu, but English language may be used for all official purposes for which it is being used at present. The Constitution should also recognise the regional languages of the various cultural units of the- State.

Further provisions relating to the transitional and ancillary matters should be incorporated in the Constitution. Necessary provisions should also be incorporated in the Constitution ensuring that an amendment of the Constitution shall be made only by two thirds majority of the total membership of the Assembly.

The State of Jammu and Kashmir having acceded to the Union of India, it becomes necessary to define the relation-ship of the State with Centre. This relationship was originally based on the Instrument of Accession whereby the State of Jammu and Kashmir acceded to the Union of India in matters of Defence, Foreign Affairs and Communication. When the -dominion of India became a republic, the relationship of the State with the Union was embodied in Article 370 of the Union Constitution. The State's accession to the Union entails certain responsibilities on the Centre for protecting the interests of the State and also for its social and economic development. In order to enable the Centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India which may be necessary for this pur-pose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State all the obligations which flow from the fact of accession and also its elaborations as contained in the Delhi Agreement should find an appropriate place in the Constitution. The Committee is of the opinion that it is high time that finality in this respect

should be reached and the relationship of the State with the Union should be expressed in clear and precise terms. The Committee accordingly recommends:

(i) that a directive be issued to the Drafting Committee to bring up appropriate proposals defining the sphere of Union Jurisdiction in the State suggesting additions, modifications and amendments wherever necessary in the Constitution (Application to Jammu and Kashmir) Order, 1950 to suit requirements of the State;

(ii) that the Drafting Committee should forthwith take up the drafting of the Constitution for the State in the light of the recommenditions contained in this report and such other reports as have been or are adopted by this Assembly from time to time.

138 Report relating to Citizenship and Fundamental Rights

1954

Legal Document No 137

The Advisory Committee on Fundamental Rights and Citizenship was set up by the resolution of the Constituent Assembly dated 7th November, 1951, in order to make recommendations as regards qualifications required for Citizenship and the determination of Fundamental Rights of the residents of the State. The Committee was reconstituted by the Consti-tuent Assembly by its resolution dated the 20th October, 1953.

The State having acceded to the Union of India, every State Subject and every person having his domicile in the State is a Citizen of India under the provisions of the Cons-titution of India. It is, however, recognized by the Govern-ment of India that this position would not affect the existing State subject definition. While the Committee adheres to prin-ciple underlying this definition, it feels that the definition should be liberalized in keeping with the changed times. The Committee therefore recommends that all the three classes of State Subjects provided in the definition be removed and a uniform class of permanent residents be established. Accor-dingly every person residing in the State who isa State Sub-ject of Class I or Class II or after having acquired immovable property in the State has been ordinarily residing there for a period of not less than ten years prior to the date of enforce-ment of this provision shall be a permanent resident of the State.

The powers of the State Legislature to define 'Permanent Residents of the State' in future in any manner it deems fit and to regulate the special rights and privileges of the Permanent Residents of the State should be preserved. A majority of not less than two-thirds of the total membership of the House shall be necessary for the exercise of this power. The Committee is of the opinion that while adequate provisions to that effect should be incorporated at an appropriate place in the Constitution of India, the provisions of Part II of the Con-stitution of India relating to Citizenship also be made applicable to the State and care should be taken to protect the special position accorded to the State Subjects to be now known as "Permanent Residents of the State" and their special rights and privileges. Necessary modification shall also have to be provided in that Part to enable those Subjects of the State who had migrated to Pakistan in 1947 in connection with the disturbance or in fear of the same, to return to the State under a permit for resettlement or permanent return issued under the authority of law that would be made by the State Legislature in due course.

The Committee is of the view that the State Legislature should also be competent to make provisions with respect to acquisition and termination of the Status of Permanent Resi-dents of the State and until the State Legislature enacts provi-sion that behalf, the existing Ijazatnama Rules should continue to remain in force and the existing procedure for obtaining a State Subject Certificate should apply for the purpose of secur-ing a certificate as to the status of a Permanent Resident.

FUNDAMENTAL RIGHTS

An examination of the Fundamental Rights embodied in the Constitutions of some of the more important countries of the world would reveal that while there are certain rights which require position by the State and which can be granted only so far as such action is practicable, there are others which require that the State shall abstain from prejudicial action. It is obvious that the rights of the first type are not normally either capable of or suitable for enforcement by legal action, while those of the second type may be so enforced. Both classes of rights are mentioned together under the head "Fundamental Rights" in certain Constitutions but in certain others distinction between two forms of rights is clearly re-cognized. A similar distinction is recognized in Dr. Lauter-pacht's" International Bill of Rights of Man 1945." The Committee having carefully considered that matter is of the view that it would be useful to separate the two classes of- rights, firstly those rights which shall be enforceable in a Court of Law and secondly those

which shall be guaranteed by enjoining upon the State to take specified and planned action in the field of special and economic reconstruction of the State. This set of rights shall retain fundamental position in the governance of the State.

The question of evolving Fundamental Rights has been considered and discussed at length by the Committee. It has been recognized by the Government of India that the Funda-mental Rights as contained in part III of the Constitution of India, should not come in the way of Land Reforms already introduced by the State or the reforms that might be undertaken by the State in future. This was particularly necessary in view of the fact that the State has not provided for any compensation for the land expropriated under its Land Reforms. The Government of India has also recognised that the special rights and privileges enjoyed by the Permanent Resi-dents of the State relating to acquisition and holding of immovable property and in respect of employment under the State shall be fully safeguarded.

The Committee having taken note of the Fundamental Rights provided in various constitutions including the Consti-tution of India recommends the following rights for adoption by the State.

1. Equality of rights of all citizens, irrespective of religion, race, caste, sex, place of birth of any of them, in all spheres-economic, political cultural and social should be guaranteed; that is to say, every citizen should have the right to Equality before law and there should be no discrimination against any citizen on grounds only of religion, race, caste, or sex, place of birth, and no citizen should be subject to any disability, liability, restriction or condition with regard to:

(a) access of shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing, ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

2. The Committee strongly feels that women must attain their just and rightful place in society and their cooper-ation in the mighty and responsible task of nation build-ing must be secured. Similarly all children born in the State should be ensured equality of opportunity irres-pective of accidents of birth and percentage. In order achieve to that end the State should be able to make any special provisions it deems fit for women and children.

3. Untouchability is abolished and its practice in any form shall be forbidden.

4. In conformity with the interests of the people, all citizens shall have right to Freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of the State, to reside and settle in any part of the territory of the State, to acquire, hold and dispose of property subject to the laws of the State and to practice any profession or to carry on any occupa-tion, trade or business.

The State should, however, have powers to impose such restrictions as are considered reasonably by the State Legislature on the exercise of these rights in the interests of general public, security of the State, public order, communal harmony, decency or morally in relation to contempt of court, defamation, or incitement to an offense, or for the protection of the special rights and privileges of the Permanent Residents of the State.

Protection in respect of conviction for offenses and of life and personal liberty shall also be afforded. The provisions and procedure pertaining to preventive detention should follow on the lines of the correspond-ing provisions in the Fundamental Rights of India.

6. All citizens shall have Right Against exploitation i.e. traffic in human beings and forced labour, employment of children in factories etc. shall be prohibited.

7. Freedom of Religion shall be guaranteed i.e. all citizens shall have the freedom of conscience and shall be free to profess, practice, and propagate any religion and to manage their respective religious affairs.

8. Cultural and educational rights should also be guaran-teed by the Constitution. The interests of the minorities should be protected and any section of citizens having a distinct language, script or culture should have the right to conserve the same.

9. Right to property shall be guaranteed, and no person shall be deprived of this property save by authority of Law. This should not, however, in any way effect the existing laws relating to land reforms nor should it prevent the State Legislature to make any further land reforms. Accordingly no law, made by the State Legis-lature, providing for the acquisition by the State of any land or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the aforesaid rights. The existing definition of land shall be preserved.

10. Similarly all these fundamental Rights should be subject to the over-riding condition that:

(i) no law of the State relating to State Subject to be hereafter called 'Permanent Residents' and regulating their rights and privileges; and

(ii) no law hereafter to be made by the State Legisla-ture defining the Permanent Residents, and con-ferring on them special rights and privileges in relation to acquisition and holding of property in the State or in matter of employment under the State and imposing restrictions on citizens other than Permanent Residents for settling within the State should become void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Part (III) of Constitution of India.

11. The Committee feels that a declaration of Funda-mental Rights would be more effective if suitable judicial remedies for the enforcement of these rights are provided and therefore it is proposed that the citi-zens shall have the right to Constitutional Remedies. In order to ensure the fullest protection in regard to enjoyment of these rights the citizens shall be allowed to seek redress from the highest court i.e. the Supre-ment Court of India. In order to avoid any possibility of conflict of the Fundamental Rights proposed above and those contained in Part (iii) of the Constitu-tion of India, the Committee feels that the former rights in so far as they vary in certain respects the provisions of the Fundamental Rights of the Union should be reflected in part (iii) of the Constitution of India. The Government of India has already agreed to provide appropriate modifications or exceptions in Part (III) of the Constitution of India to suit the requirements of the State.

As indicated above there should be separate set of Principles which would be fundamental in the govern-ance of the State and shall be intended for the guidance of the State. The Committee recognises that in a democratic State every person must be provided with equal opportunities and adequate minimum of a civili-sed standard of life. To realise that ideal, however, the State must take resort to economic planning with a view to achieve all sides advance on a country wide scale. Similar other rights, for instance, the right to rest, the right to material security etc. can be ensured only when a stage of industrial development and economic prosperity, as envisaged in 'New Kashmir', is achieved. The Committee, therefore, proposes that the principles of policies set forth below should serve as guidance for the State leading the people towards that end.

I. The State shall within the limits of its economic capacity and development make effective provision for securing the right to work, that is, the right to receive guaranteed work with payment for their labour in accordance with its quantity and quali-ty subject to a basic minimum and maximum wage established by law.

II. The State shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, better conditions of work ensuring a decent stand-ard of life, full enjoyment of leisure and cultural opportunities.

III. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

IV. All permanent residents of the State shall have the right to material security in old age as well as in the event of sickness and loss of capacity to work.

This right shall be ensured by the wide development of social insurance of workers and employees at the expense of the State, free medical aid for workers and the provision of a wide network of health resorts for the use of working men and women.

The State shall, in particular, direct its policy towards securing:

(i) that the Permanent Residents of the State, men and women equally, have the right to an adequate means of livelihood;

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of free competition shall not be allowed to result in the concentration of the ownership and control of essential com-modities in few individuals to the common detriment;

(iv) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter voca-tions unsuited to their age and strength; and

(v) that childhood and youth are protected against moral and material abandonment;

(vi) every Permanent Resident shall be entitled to free education, and it shall be the duty of the State to provide free education which shall be compul-sory for all children upto the primary standard.

(vii) the State shall promote with special care the edu-cational and economic interests of the socially and educationally backward sections of the people and shall protect them from social injustice and all forms of exploitations.

(viii) the State shall foster and encourage the growth and development of State and regional languages' especially those which are more backward by every possible means including the following:

(i) the establishment of a State Languages Aca-demy where scholars and gramarians shall work to develop these languages by:

(a) perfecting and providing their scripts;

(b) enriching them through foreign transla-tions;

(c) studying their history;

(d) compiling dictionaries and textbooks;

(ii) founding of State scholarships for the study of these languages:

(iii) fostering of local press and publications in in local languages; and

(ix) It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest declared by the Law of the State to be national importance, from spoilation, des-truction, removal, disposal or export as the case may be and to preserve and maintain according to the law of the State all such monuments or places or objects.

In the light of the foregoing the committee recommends that:

(i) the Drafting Committee, set up by this House be directed to propose appropriate modifica-tions or exceptions in Part II and Part III of the Constitution of India in their application to the State of Jammu and Kashmir in the light of the recommendations contained in this report; and

(ii) that the Drafting Committee should, while preparing the Draft Constitution of the State incorporate therein the rights and principles indicated above.

139 Report of the Drafting Committee

11th February, 1954

Legal Document No 138

In pursuance of the directives contained in the Reports of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship, as adopted by the House on 6th February, 1954, the Drafting Committee has considered the question as to how best to give effect to the recommendations embodied in these Reports. The task which the Committee has to discharge requires action in the following directions:

l. Preparation of the Draft Constitution of the State.

2. Defining the sphere of Union Jurisdiction in the State and for that purpose suggesting the various provisions of the Constitution of India along with modifications and exceptions subject to which these provisions should apply to the State. These would include appropriate modifications and exceptions in Part II (Citizenship) and Part III (Fundamental Rights) in their application to the State of Jammu and Kashmir in the light of the recommendations contained in the report of the Advisory Committee on Citizenship and Fundamental Rights.

3. Consequential amendments in the Jammu and Kashmir Constitution Act, 1996.

As for the preparation of the Draft Constitution for the State the Committee feels that in view of the importance and magnitude of the work involved, adequate time will be needed for the completion of this task and accordingly recommends that the same may be allowed.

The Annexure to this Report while reflecting the desire of the House for the ratification of the accession of the State with the Union of India, indicates in detail the provisions of the Constitution of India which generally correspond to Defence, Foreign Affairs and Communications and such other matters as are considered essential concomitants of the fact of accession. In accordance with the directions contained in the two reports, referred to above, the Committee has eudeavoured to clearly demarcate the sphere of Union Jurisdiction keeping intact all along the residual powers of the State. While doing so the Committee has further provided adequate safe-guards for preserving the basic policies of the State in respect of the land-reforms and the interests of the permanent residents of the State.

A bill for the purpose of making consequential amend-ments in the Jammu and Kashmir Constitution Act, 1996, in the light of the Reports referred to in the opening paragraph of this Reports will be drafted and presented to the House in due course.

Jammu
Dated: 11th February, 1954.

(Sd.) G.L. Dogra
(„) Mir Qasim
(„) D. P. Dhar
(„) Ghulam Rasul Renzu
(„) Harbans Singh Azad
Members Drafting Committee.

140 The Jammu and Kashmir Constitution (Amendment) Act

2011

Legal Document No 139

(Extract)

1. **Short** Title and Commencement:...

(1) This Act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2011.

(2) Except as hereinafter provided, the provisions of this Act shall be deemed to have come into force from 14th May, 1954.

(3) Insertion of new part after section 5 :...After section 5 of the Jammu and Kashmir Constitution Act, 1996 (hereinafter referred to as, ' the said Act') the following new part shall be inserted namely:

PART I (A)

PERMANENT RESIDENTS

5-A. Every person who is or is deemed to be a citizen of India under the provisions of Part II of the Constitution of India as applied to the State of Jammu and Kashmir under the Constitution (Application to Jammu and Knshmir) Order 1954, shall be a permanent resident of the State of Jammu and Kashmir if at the date of commencement of the Jammu and Kashmir Constitution (Amendment) Act 2011, namely the 1 4th May 1954;

(a) he was a State Subject of Class II as defined in the State Subject Notification No. I-L/84 dated 20th April, 1927 read with Notification No. 13/L dated 27th June, 1932, or

(b) after having acquired immovable property in the Jammu and Kashmir State in pursuance of an Ijazat-nama granted under the Ijazatnama Rules for the time being in force, he has been ordinarily resident in the territory of the State for not less than ten years prior to the date of such commencement.

Explanation

All persons who before the commencement of the the Constitution (Application to Jammu and Kashmir) Order 1954 were State Subjects of Class I or Class II as defined in the State Subject Notification No, I-L/84 dated 20th April,1927, read with Notification No. 13/L dated 27th June, 1932, and who having migrated after the first day of March. 1947, to the territory now included in Pakistan return to the State under permit for settlement in the State or permanent return issued by or under the authority of any law made by the State Legis-lature shall continue to be deemed permanent residents of the State.

Status of permanent residentship of certain juristic persons:... 5-B. Notwithstanding anything contained in the foregoing provisions, of this Act every Company, which, immediately before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, was recognised to be a State Subject within the meaning of State Subject Notification' No. I-L/84 dated 20th April, 1927 shall be deemed to be a permanent resident at such commencement.

Explanation

In this section "Company" shall have meaning assigned: to it in the Jammu and Kashmir Companies Act, 1927.

Continuance of the Status of permanent residentship:...5-C Every person who is or who is deemed to be a permanent resident of the State of Jamrnu and Kashmir shall subject to the provisions of any law that may be made by the State Legis-lature, continue to be such permanent resident.

State Legislature to define and regulate the rights of perma-nent residents by 2/3rds majority:...5-D. The power of the State Legislature to define the term permanent resident of the State and to regulate their special rights and privileges shall be exercisable only by a majority of not less than two thirds of the total membership of the Legislative Assembly.

State Legislature to make Laws respecting the acquisition of the status of permanent resident :... 5-E. Nothing contained in the foregoing provisions shall derogate from the power of the State Legislature to make such laws as it thinks fit with respect to the acquisition of the status of the permanent residents and until the State Legislature enacts provi-sions in that behalf the existing Ijazatnama Rules shall continue to remain in force and the existing procedure for

obtaining a State Subject Certificate shall be followed for the purpose of securing the certificate of being a permanent resident of the State.

Reference to the term State Subject :... 5- F. Unless the context otherwise requires all references in the existing laws of the State to the expression 'State Subject' shall be construed as references to the "permanent residents of the State".

3. Amendment of section 23 Act XIV of 1996 :... In section 23 of the said Act for the words 'State Subjects' the words "permanent residents of the State" shall be substituted

4. Amendment of section 29, Act XIV of 1996 :... Section 29 of the said Act shall be numbered as sub-section (I) of the said section and after sub-section (I) as so renumbered the following sub-section shall be added, namely:

"Powers, Privileges and Immunities of the Legislative Assembly and its Members and Committee - (2) in other respects, the powers, privileges and immunities of the Legislative Assembly and the Members and the Committees thereof shall be such as may from time to time be defined by law and until so defined shall be those of the Parliament of India and its Members and Committees."

5. Amendment of section 31, Act XIV of 1996 :... In sub-section (3) of section 31 of the said Act for the words "then become an Act and have the force of law" the words "become an Act and have the force of law as soon as it is published in either of the aforesaid languages" shall be substituted.

6. Amendment of section 37, Act XIV of 1996...In section 37 of the said Act for the words "a member of Board of Judicial Advisors" the words "any Judge of the Supreme Court of India" shall be substiuted.

7. Amendment of section 43, Act XIV of 1996 ...In section 43 of the said Act:

(i) in clause (c) the words "and the members of Board of Judicial Advisors" shall be deleted and (ii) after clause (d) the following new clause shall be inserted, namely:

"(dd) The salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly."

8. Amendment of section 54, Act XIV of 1896...In section 54 of the said Act for the words "Coat of Arms" the words "State Emblem" shall be substituted.

9. Amendment of section 56, Act, XIV of 1996 .. In sub-section (2) of section 55 of the said Act, for the words 'Rupees ten thousand" the words "Rupees twenty thousand" shall be substituted.

(ii) this section shall come into force from the date of publication of this Act in the Government Gazette.

10. Omission of section 62, Act XIlV of 1996 - Section 62 of the said Act shall be omitted.

11. Insertion of new section after section 62, Act XIV of 1996 - After section 62 of the said Act, the following new section shall be inserted, namely:

"62A. If the High court is satisfied that a case pending in a court subordinate to it involves a substantial ques-tion of law as to the interpretation of this Act or the Constitution of India as applied to the State by the Constitution (Application to Jammu and Kashmir) Order, 1954. the determination of which is necessary for the case, it shall withdraw the case and may -

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its Judgment on such question and the said court shall on re-ceipt thereof proceed to dispose of the case in conformity with such judgment.

12. Insertion of new section 66 - A, Act XIV of 1996 ... After section 66 of the said Act the following new section shall be inserted, namely:

"66 - A. If at any time it appears to the Council that a question of law or fact has arisen, or is likely to arise, which if of such a nature and of such public impor-tance that it is expedient to obtain the opinion of the High court upon it, it may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the Council its opinion thereon."

13. Omission of section 71, Act XIV of 1996 Section 71 of the said Act shall be omitted.

14. Omission of section 75, Act XIV of 1996... Section 75 of the said Act shall be omitted.

15. Insertion of new section 76-A, Act XIV of 1996... After section 76 of the said Act the following new section shall be inserted, namely:

"Saving as regards Letters Patent 76-A :...The provision of the Letters Patent granted to the High Court on 28th May,1943 shall continue to remain in force except in so far as these are inconsistent with the provisions of this Act or of any other law for the timebeing in force."

16. Amendment of Schedule I-A, Act XIV of 1996 ...In form "C" of Schedule I-A of the said Act the words "for the members of the Board of Judicial Advisors and", occurring in the long title, and the words "President/a member of the Board of Judicial Advisors", in the text of the oath shall be omitted.

141 The Constitution of Jammu and Kashmir, 1956

Legal Document No 140

(Extract)

We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of accession of this State to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves.

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among us all;

FRATERNITY, assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY This seventeenth day of November, 1956 do Hereby Adopt Enact and Give to ourselves this constitution.

PART I

PRELIMINARY

1. (1) this Constitution may be called the Constitution of Jammu and Kashmir.

(2) This section and sections 2,3,4,5,6,7,8, and 158 shall come into force et once and the remaining provisions of this constitution shall come into force on the twenty-sixth day of January, 1957, which day is referred to in this Constitution as the commencement of this Constitution.

2. (I) In this Constitution, unless the context otherwise requires.

(a) "Constitution of India" means the Constitu-tion of India as applicable in relation to this State.

(b) "existing law" means any law, ordinance, order bye-law, rule notification; or regulation based, made or issued before the commence-ment of this Constitution by the Legislature or other competent authority or person hav-ing power to pass. make or issue such law, ordinance, order bye-law rule, notification or regulation;

(c) "Part" means a part of this Constitution;

(d) "Schedule" means a schedule to this Constitution; and

(e) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly.

(2) Any reference in this Constitution to Acts or laws of the State Legislature shall be construed as in-cluding a reference to an Ordianance made by the Sadar-i-Riyasat.

PART II

THE STATE

(3) The State of Jammu and Kashmir is and shall be an integral part of the Union of India.

(4) The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under the sovereignty or suzerainty of the Ruler of the State.

(5) The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India.

PART III

PERMANENT RESIDENTS

(6) (l) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May, 1954.

(a) he was a State subject of class I or of class II: or

(b) having lawfully acquired immovable pro-perty in the State, he has been ordinarily resident in the State for not less than ten years prior to that date.

(2) Any person who, before the fourteenth day of May, 1954 was a State subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory -now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.

(3) In this section, the expression "State subject of Class I or of Class II" shall have the same -meaning as the State Notification No I-L/84 dated the twentieth April. '1927, read with State Notification No 13/L dated the twenty- seventh June, 1932.

7. Unless the context otherwise requires, all referen-ces in any existing law to hereditary State subject or to State subject of class I or of Class II or of class III shall be construed as references to perma-nent residents of the State.

8. Nothing in foregoing provisions of this part shall derogate from the power of the State legislature to make any law defining the classes the persons who are, or shall be permanent residents of the State.

9. A Bill marking provision for any of the following matters, namely.

(a) defining or altering the definition of, the classes of persons who are, or shall be, per-manent residents of the State;

(b) conferring on permanent residents any special rights or privileges;

(c) regulating or modifying any special rights or privileges enjoyed by permanent residents; shall be deemed to be passed by either House of the Legislature only if It is passed by a majority of not less than two-thirds of the total membership of that House.

10. The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

11. In this part, unless the context otherwise requires, the State includes the Government and the Legis-lature of the State and all local or other authori-ties within the territory of the State or under the control of the Government of the State.

12. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the State and it shall be the duty of the State to apply these principles in making laws.

13. The prime object of the State consistent with the ideals and objectives of the freedom movement envisaged in "New Kashmir" shall be the pro-motion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein justice-social, economic and political-shall inform all the institutions of natio-nal life.

14. Consistently with the objectives outlined in the foregoing section, the State shall develop in a planed manner the productive forces of the coun-try with a view to enriching the material and cul-tural life of the people and foster and protect.

(a) the public sector where the means of produc-tion are owned by the State;

(b) the co-operative sector where the means of production are co-operatively owned by indi-viduals or groups of individuals; and

(c) the private sector where the means of produc-tion are owned by an individual or a corpora-tion employing labour, provided that the operation of this sector is not allowed to result in the concentration of wealth or of the means of production to the common detriment.

15. The State shall endeavour to organise and develop agriculture and animal husbandry by bringing to the aid of the cultivator tile benefits of modern and scientific research and techniques so as to ensure a speedy improvement in the standard of living as also the prosperity of the rural masses.

16. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

17. The State shall, in order to rehabilitate, guide and promote the renowned crafts and cottage indus-tries of the State, initiate and execute well consi-dered programmes for refining and modernising techniques and modes of production, including the employment of cheap power so that unnece-ssary drudgery and toil of the workers are elimi-nated and the artistic value of the products en-hanced, while Else fullest scope is provided for the encouragement and development of individual talent and initiative.

18. The State shall lake steps to separate the judiciary from the executive in the public-services, and shall seek to secure a judicial system which is humane, cheap, certain, objective and impartial, whereby justice shall be done and shall be seen to be done and shall further strive to ensure efficiency, im-partiality and incorruptibility of its various organs of justice, administration and public utility.

19. The State shall, within the limits of its economic capacity and development, make effective provi-sion for securing:

(a) that all permanent residents, man and women equally, have the right to work, that is, the right to receive guaranteed work with pay-ment for labour in accordance with its quan-tity and quality subject to a basic minimum and maximum wage established by law;

(b) that the health and strength of workers, men and women and the tender age of children are not abused and that permanent residents are not forced by economic necessity to enter avocations unsuited to their sex, age or strength;

(c) that all workers, agricultural or otherwise have reasonable, just and humane conditions of work with full enjoyment of leisure and social and cultural opportunities, and

(d) that all permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement unemployment and other cases of undeserved want by providing social insurance, medical aid, hospitals, sana-toria and health resorts at State expense.

20. The State shall endeavour:

(a) to secure to every permanent resident the right to free education upto the University standard;

(b) to provide, within a period often years from the commencement of this constitution, com-pulsory education for all children until they complete the age of fourteen years; and

(c) to ensure to all workers and employees ade-quate facilities for adult education and part -time technical, professional and vocational courses.

21. The State shall strive to secure:

(a) to all children the right to happy childhood with adequate medical care and attention; and

(b) to all children and youth equal opportunities in education and employment, protection against exploitation, and against moral or material abandonment.

22. The State shall endeavour to secure to all women:

(a) the right to equal pay for equal work;

(b) the right to maternity benefits as well as ade-quate medical care in all employments;

(c) the right reasonable maintenance, extending to cases of married women who have been divorced or abandoned;

(d) the right to full equality in all social, educa-tional, political and legal matters; and

(e) special protection against discourtesy, defama-tion, hoolganism and other forms of miscon-duct.

23. The State shall guarantee to the socially and edu-cationally backward sections of the people special care in the promotion of their educational, mate rial and cultural interests and protection against social injustice.

24. The State shall make every effort to safeguard and promote the health of the people by advancing public hygiene and by prevention of disease through sanitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the State and, with particular emphasis, in its remote and backward regions.

25. The State shall combat ignorance, superstition, fanaticism, communialism, racialism, cultural backwardness and shall seek to foster brotherhood and equality among all communities under the aegis of a secular State.

PART V

THE EXECUTIVE

THE SADAR-I-RIYASAT

26. (1) The Head of the State shall be designated as the Sadar-i-Riyasat.

(2) The executive power of the State shall be vested in the Sadar-i-Riyasat and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(3) Nothing in this Section shall:

(a) be deemed to transfer to the Sadar-i--Riyasat any functions conferred by any existing law on any other authority; or

(b) prevent the State legislature from confer-ring by law functions on any authority subordinate to the Sadar-i-Riyasat.

27. The Sadar-i-Riyasat shall be the person who for the time being is recognised by the President as such: Provided that no person shall be so recognised unless he:

(a) is a permanent resident of the state;

(b) is not less than twenty-five years of age; and

(c) has been elected as Sadar-i-Riyasat by a majority of the total membership of the Legislative Assembly in the manner set out in the First Schedule.

28. (1) The Sadar-i-Riyasat shall hold office during the pleasure of the President.

(2) The Sadar-i-Riyasat may, be writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provision of this section, the Sadar-i-Riyasat shall hold office for a term of five years from the date on which he enters upon his office:

Provided that he shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his offlee.

29. A person who holds or has held office as Sadar-i-Riyasat shall, subject to the other provisions of this Constitution, be eligible for reselection to that office.

30. (1) The Sadar-i-Riyasat shall not be a member of either House of Legislature and if a member of either House be elected and recognised as Sadar-i-Riyasat, he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as Sadar-I-Riyasat.

(2) The Sadar-i-Riyasat shall not hold any other office of profit.

(3) The Sadar-i-Riyasat shall be entitled to such emoluments, allowances and privileges as are specified in the second schedule.

(4) The emoluments and allowances of the Sadar-i-Riyasat shall not be diminished during his term of office.

31. The Sadar-i-Riyasat and every person acting as Sadar-i-Riyasat shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court, or in his absence, the senior-

most judge of the High Court available, in an oath or affirmation in the following form that is to sayed "I, A. B., do swear in the name of God that I will faithfully discharge the functions of the Sadar-I-Riyasat of Jammu and Kashmir and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of State."

32. The Sadar-i-Riyasat may be removed from his office by the President if an address by the Legis-lative Assembly supported by a majority of not less than two-thirds of its total membership is presented to the president praying for such removal on the ground of violation of the Constitution.

33. When a vacancy occurs in the office of the Sadar-i-Riyasat by reason of his death, resignation or removal or when the Sadar-i-Riyasat is unable to discharge his functions owing to absence, illness or or any other cause, the functions of the office shall, until the assumption of office by a newly elected Sadar-i-Riyasat or the resumption of duties by the Sadar-i-Riyasat, as the case may be, dis-charged by such person as the President may on the recommendation of the Council of Ministers of the State, recognise as the acting Sadar-i-Riyasat.

34. The Sadar-i-Riyasat shall have the power to grant pardons, reprieves, respites or remissions of punish-ment or to suspend, remit or commute the sentence of any person convicted of any offense against any law relating to a matter to which the executive power of the State extends.

THE COUNCIL OF MINISTERS

35. (1) There shall be a council of Ministers with the Prime Minister at the head to aid and advise the Sadar-i-Riyasat in the exercise of his functions.

All functions of the Sadar-i-Riyasat except those under sections 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Sadar-i-Riyasat shall not be inquired into in any court.

36. The Prime Minister shall be appointed by the Sadar-i-Riyasat and the other Ministers shall be appointed by the Sadar-i-Riyasat on the advice of The Prime Minister.

37. (1) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(2) A Minister who for any period of six conse-cutive months is not a member of either House of Legislature shall upon the expiry of that period cease to be a Minister.

38. The Sadar-i-Riyasat may on the advice of the Prime Minister appoint from amongst the members of either House of Legislature such number of Deputy Ministers as may be necessary.

39. The Ministers and the [Deputy Ministers shall hold office during the pleasure of the Sadar-i--Riyasat.

40. Before a Minister or a Deputy Minister enters upon lids office, the Sadar-i-Riyasat or, in his absence, any person authorised by him, shall administer to the Minister or the Deputy Minister to oaths of office and of secrecy according to the form set out for the purpose in the Fifth Schedule.

41. The salaries and allowances of Ministers and Deputy Ministers shall be such as the Legislature relay from time to time by law determine and, until so determined, shall be such as are payable respectively to the Ministers and the Deputy Ministers under the Jammu and Kashmir Minister s Salaries Act, 1956 (Act VI of 1956) the Jammu and Kashmir Minister's Travelling Allowances Rules for the time being in force, and the Jaminu and Kashmir Deputy Ministers Salaries and Allowances Act. S. 2010 (Act VIII of S.2010)

THE ADVOCATE GENERAL

42. (1) The Sadar-i-Riyasat shall appoint a person who is qualified to be appointed a Judge of the High Court, to be Advocate General for the State.

(2) It shall be the duty of the Advocate General to give advice to the Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Govern-ment, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties, the Advocate General shall have the right of audience in all courts in the State.

(4) The Advocate General shall hold office during the pleasure of the Sadar-i-Riyasat and receive such remuneration as the Sadar-i-Riyasat may determine.

CONDUCT OF GOVERNMENT BUSINESS

43. The Sadar-i-Riyasat shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business.

44. It shall be the duty of the Prime Minister

(a) to communicate to the Sadar-i-Riyasat all decisions of the council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Sadar-i-Riyasat may call for; and

(c) if the Sadar-i-Riyasat so rqeuires to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

45. (1) All executive action of the Government shall be expressed to be taken in the name of the Sadar-i-Riyasat of the Jammu and Kashmir.

(2) Orders and other instruments made and executed in the name of the Sadar-i-Riyasat or of the Government of Jammu and Kashmir shall be authenticated in such manner as may be specified in the rules to be made be the Sadar-i-Riyasat, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Sadar-i-Riyasat or as the case may be, by the Government of Jammu and Kashmir.

PART VI

THE STATE LEGISLATIVE

COMPOSITION OF THE STATE LEGISLATURE

46. There shall be Legislature for the State which shall consist of the Sadar-i-Riyasat and two Houses be known respectively as the Legislative Assembly and the Legislative Council.

47. (1) The Legislative Assembly shall consist of one hundred members chosen by direct election from territorial constituencies in the State; Provided that the Sadar-i-Riyasat may, if he is of opinion that women are not adequately represented in the Assembly nominate not more than two women to be members thereof.

(2) For the purposes of sub-section (I), the State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State. Explanation: In this sub-section, the express-ion "Population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each census, the number, extent and boundaries of the territor-ial constituencies shall be readjusted by such authority and in such manner as the Legislature may be law determine:
Provided that such readjustment shall not affect representation in the Legislative Assemb until the disolution of the then exist-ing Assembly.

48. Notwithstanding anything contained in section 47, until the area of the State under the occuptions of Pakistan ceases to so occupied and the people residing in that area elect their representatives

(a) twenty-five seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total member-ship of the Assembly; and the said area shall be excluded in delimiting the territorial Constituencies Under Section 47.

49. (I) There shall be reserved in the Lagislative Assembly for the Scheduled Castes in the State a number of seats which shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the popu-lation of the Scheduled Castes bears to the population of the State.

Explanation: In this sub-section:

(a) "population" has the same meaning as in sub-section (2) of section 47; and
(b) "Scheduled Castes" means the caste, races or tribes or part of, or groups within castes, races or tribes which are for the purposes of the Constitution of India deemed to be Scheduled Casts in relation to the State under the pro-visions of article 341 of that Constitution.

(2) The provisions of sub-section (1) shall cease to have effect on the expiration of a period of five years from the commencement of this Constitution:

Provided that such cesser shall not affect any representation in the Legislative Assembly until the dissolution of the then existing Assembly:

50. (1) The Legislative Council shall consist of thirty six members, chosen in the manner provided in this section.

(2) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Kashmir and are not members of the Legislative Assembly.

(3) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Jammu and are not members of the Legislative Assembly. Provided that of the members so elected, at least one shall be a resident of Doda District and at least one shall be a resident of Poonch District.

(4) One member shall be elected by each of the following electorates, namely

(a) the members of municipal council, town area committees and notified area com-mittees in the Province of Kashmir;

(b) the members of municipal council, town area committees, and notified area committees in the Province of Jammu;

(c) permanent residents who have been for at least three years engaged in teaching in educational institutions recognised by the Government in the Province of Kashmir; and

(d) permanent residents who have been for at least three years engaged in teaching in educational institutions recognised by the Government in the Province of Jammu.

(5) Two members shall be elected by each of the following electorates, namely:

(a) the members of the Panchayats and such other local bodies in the Province of Kashmir as the Sadar-i-Riyasat may by order specify; and

(b) the members of the Panchayats and such other local bodies in the Province of Jammu as the Sadar-i-Riyasat may by order specify.

(6) Six members shall be nominated by the Sadar-i-Riyasat, not more than three of whom shall be person belonging to any of the socially or economically backward classes in the State, and the others shall be persons having special knowledge or practical experi-ence in respect of matters such as literature, science, art, co-operative movement and social service.

(7) Elections under sub-section (2) and (3) shall be held in accordance with the system of pro-portional representation by means of the single transferable vote.

GENERAL PROVISIONS

51. A person shall not be qualified to be chosen to fill a seat in the Legislature unless he:

(a) is a permanent resident of the State;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in the Legisla-tive Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Legislature.

52. (1) The Legislative Assembly, unless sooner dis-solved, shall continue for five years from the date appointed for its first meeting and not longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly;

Provided that the said period may, while a Proclamation of Emergency issued under arti-cle 352 of the Constitution of India is in operation, be extended by the State Legislature by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council shall not be subject to dissolution but as nearly as possible one-third of the members thereof shall retire, as soon as may be, on the expiration of every second year in accordance with the provisions made in that behalf by Legislature by law.

53. (1) The Sadar-i-Riyasat shall from time to time summon each House of the Legislature to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Sadar-i-Riyasat may from time to time...

(a) prorogue the House or either house (b) dissolve the Legislative Assembly.

54. (1) The Sadar-i-Riyasat may address either House of Legislature, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Sadar-i-Riyasat may send messages to either House, whether with respect to a Bill then bending in the Legislature, or otherwise and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

55. (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Sadar-i-Riyasat shall address both Houses of Legislature assembled together and inform the Legislature of the cause of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allot-ment of time for discussion of the matters reffered to in such address.

56. Every Minister and the Advocate General shall have the right to speak in, and otherwise to take part in the proceedings, of both Houses and to speak in, and otherwise to to take part in the proceedings of, any Committee-of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

OFFICERS OF THE STATE LEGISLATURE

57. The Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often at office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker, or Deputy Speaker, as the case may be.

58. A member holding office as Speaker or Deputy Speaker of the Legislative Assembly:

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolu-tion of the Assembly passed by a majority of all the then members of the Assembly;

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days notice has been given of the intention to move the resolution.

Provided further that, whenever the Assembly is dissolved, the Speaker that not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

59. (1) While the office of Speaker is vacant the duties of the office shall be performed by the Deputy Speaker or, if the office of the Deputy Speaker is also vacant, by such member of the Assembly as the Sadar-i-Riyasat may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

60. (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker shall not, though he is present, preside and the provisions of sub-section (2) of section 59 shall apply inrelation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of the Legislative Assembly while any resolu-tion for his removal from office is under con-sideration in the Assembly and shall, notwith-standing anything in section 67, be entitled to vote only in the first instance on such resolu-tion or on any other matter during such pro-ceedings but not in the case of an equality of votes.

61. (1) The Legislative Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of the Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

(2) The provisions of sections 58,59 and 60 shall apply in relation to the Chairman and Deputy Chairman of the Legislative Council with the substitution of the words "Chairman" and "Council" for the words "Speaker" and "Assembly" respectively wherever they occur in those provisions, and with the omission of the further proviso to section 58.

62. There shall be pay to the speaker and the the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by Legislature by law and, until provi-sion in that behalf is so made, such salaries and allowances as are specified in the Third Schedule.

63. (1) Each House of the Legislature shall have a separate secretarial Staff:

Provided that nothing in this sub-section shall be construed as preventing the creation of posts common to both Houses.

(2) The Legislature may by law regulate the re-cruitment, and the conditions of service of persons appointed, to the secretarial staff of each House.

(3) Until provision is made by the Legislature under sub-section (2), the Sadar-i-Riyasat may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the con-ditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said sub-section.

CONDUCT OF BUSINESS

64. Every member of the Legislative Assembly or the Legislative Council shall before taking his seat, make and sub-scribe before the Sadar-i-Riyasat or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Fifth Schedule.

65. Save as otherwise provided by the rules of proce-dure of the House, the quorum to constitute a meeting of the Legislative Assembly and of the Legislative Council shall be twenty and ten re-spectively.

66. A House of the Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered

subsequently that some person who was not entitl-ed so to do sat or voted or otherwise took part in the proceedings.

67. (1) Save as otherwise provided in this Constitu-tion, all questions at any sitting of a House of the Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

(2) The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

DISQUALIFICATIONS OF MEMBERS

68. (1) No person shall be a member of both Houses of the Legislature and provision shall be made by Legislature by law for the vacation by a person who is chooser a member of both Houses of his seat in one House or the other.

(2) If a member of a House of the Legislature resigns his seat by writing under his hand addressed to tile Speaker or the Chairman, as the case may be, his s at shall thereupon become vacant.

(3) If for a period of sixty days a member of a House of the Legislature is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of:

(a) such absence caused by reason beyond his control; or

(b) any period during which the House is prorogued or is adjourned for more than four consecutive days.

69. (1) A person shall be disqualified for being chosen and for being a member of the Legislative Assembly or Legislative Council:

(a) if he holds any office of profit under the Government of India or the State Govern-ment within the Union of India, other than an office declared by Legislature by law not to dis-qualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a permanent resident of the State or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance to adherence to a foreign State;

(e) if he is so disqualified by or under any law made by the Legislature.

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Government of India, the State Government or any other State Government vithin the Union of India, by reason only that he is a Minister, or a Deputy Minister.

70. (1) If it is represented to the Speaker or the Chairman that a member of the Legislative Assembly or, as the case may be, of the Legis-lative Council is disqualified for being such a member under the provisions of section 69, or was so disqualified at any time since being chosen as a member and the member does not admit that he is or was so disqualified, the question shall be referred to the High Court decision and its decision shall be final:

Provided that w here the disqualification in question arises from circumstances which subsisted at the time of his being chosen as such member, no such representation as aforesaid shall be entertained:

(a) unless it is made after the expiration of the period by law for presenting an elec-tion petition calling in question the election of the member; and

(b) if such an election petition is pending or has been tried, unless the Speaker or Chairman as the case may be is satisfied that the question of the members' disquali-fication by reason of those circumstances has not been raised or, as the case may be, was not raised, in the proceedings on the election petition.

(2) Where on a representation made under sub-section (I) the member admits that he is or w. s disqualified under the provisions of section 69, or where on a reference made under that sub-section the High Court decides that the member is or was so disqualified, his seat shall thereupon become vacant.

71. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council before he has complied with the requirements of section 54 or when he knows that he is not quali-fied or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Legislature, he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred rupees to be recovered as a debt due to the State.

POWERS, PRIVILEGES AND IMMUNITIES OF THE STATE LEGISLATURE AND ITS MEMBERS

72. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature.

(2) No member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of a House of the Legislature of any report, paper, votes, or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature and- of the members and the committees of a House of the Legislature shall be such as may from time to time be defined by Legislature by law, and until so defined shall be those of the Parliament of India and of its members and committees.

(4) The provisions of sub-sections (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right t o speak, in and otherwise to take part in the proceedings of, a House of the Legislature or any committee thereof as they apply in relation to members of that Legislature.

73. Members of the Legislative Assembly and the Legislative Council shall be entitled to receive such salaries and allowances as may from time to time be determined by Legislature by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly.

LEGISLATIVE PROCEDURE

74. (1) Subject to the provisions of sections 76 and 84 with respect to Money Bills and other Finan-cial Bills, a Bill may originate in either House of the Legislature.

(2) Subject to the provisions of sections 75 and 76 a Bill shall not be deemed to have been passed by the Legislature unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the House or House thereof.

(4) A Bill pending in the Legislative Council which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly or which having been passed by the Legislative Assembly, is pending in the Legi-slative Council, shall lapse on a dissolution of the Assembly

75. (1) If after a Bill has been passed by the Legisla-tive Assembly and transmitted to the Legisla-tive Council:

(a) the Bill is rejected by the Council; or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree; the Legisl-ative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subse-quent session with or without such amendments, if any, as have been made suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so palmed for the second time by the legislative Assembly and transmitted to the Legislative Council:

(a) the Bill is rejected by the Council; or

(b) more shall one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature in the form in which it passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this section shall apply to a Money Bill.

76. (1) A Money Bill shall not be introduced in the Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly, it shall be transmitted to the Legislative Council for its recommenda-tions and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legis-lative Assembly with its recommendations, and the Legislative Assemble may there upon either accept or reject all or any of the recom-mendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bil] shall deemed to have been passed by both Houses with the amend-ments recommended by the Legislative Coun-cil and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

5. If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

77. (1) For the purposes of the part, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters namely:

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations under-taken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of money into or the with-drawal of moneys from any such Fund:

(d) the appropriation of moneys out of the Consolidated Fund of the State;

(e) the declaring of any expenditure to be expenditure charges on the consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or any matter incidental to any of the matters specified in clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for lice-nces or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.

(4) There shall be endorsed an every Money Bill when it is transmitted to the Legislative Council under section 76 and when it is pre-sented to the Sadar-i-Riyasat for assent under section 78, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

78. When a Bill has been passed by both Houses of the Legislature, it shall be presented to the Sadar--i-Riyasat and the Sadar-i-Riyasat shall declare either that he assents to the Bill or that he with-holds assent therefrom.

Provided that the Sadar-i-Riyasat may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desira-bility of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the Sadar-i-Riyasat for assent, the Sadar-i-Riyasat shall not withhold assent therefrom.

PROCEDURE IN FINANCIAL MATTERS

79. (1) The Sadar-i-Riyasat shall in respect of every financial year cause to be laid before both Houses of the Legislature a statement of the estimated receipts and expenditure of the State for that year, in this part referred to as the "annual financial statement." (2) The estimates of expenditure embodied in the annual financial statement shall show separately

(a) the sums required to meet expenditure described by this constitution as expendi-ture charged upon the Consolidated Fund of the State; and

(b) the sums required to meet other expendi-ture proposed to be made from the con-solidated Fund of the State; and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the consolidated fund of the State:

(a) the emoluments and allowances of the Sadar-i-Riyasat and other expenditure relating to his office;

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges. and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of the Judges of the High Court;

(e) any sums required to satisfy any judge-ment decree or award of any Court or arbitral tribunal;

(f) any other expenditure declared by this Constitution, or by Legislature by law, to be so charged.

80. (1,) So much of the estimates as relates to expen-diture changed upon the Consolidated Fund of the State shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preven-ting the discussion in the Legislature of any those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Sadar-i--Riyasat.

(1) As soon as may be after the grants under section 80 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated fund of the State of all moneys required to meet:

(a) the grants so made by the Assembly; and (b) the expenditure charged on the Consoli-dated Fund of the State but not exceed-ing in any case the amount shown in the statement previously laid before the Houses.

(23 No amendment shall be proposed to any such Bill in either House of the Legislature which will have the effect of varying the amount or altering the destination of any grant to made or of varying the amount

of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under the sub-section shall be final.

(3) Subject to the provisions of sections 89 and 83, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accor-dance with the provisions of this section

12. (1) The Sadar-i-Riyasat shall:

(a) if the amount authorised by any law made in accordance with provisions of section 81 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplemen-tary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any ser-vice during a financial year in excess of the amount granted for the service and for that year, cause to be laid before the Houses of the Legislature another statement showing the estimated amount of that expenditure or cause to be presented to the Legis-lative Assembly a demand for such excess, as the case may be.

(2) The provisions of sections 79, 80 and 81 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial state-ment and the expenditure mentioned therein or to a demand for grant and the law to be 'made for the authorization of appropriation of moneys out of the Consolidated Fund of the state to meet such expenditure or grant.

83. (1) Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assem-bly shall have power:

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in section 80 for the voting of such grant and the pas-sing of the law in accordance with the provisions of section 81 in relation to that expenditure;

(b) to make a grant for meeting an unexpec-ted demand upon the resources of the State when on account of the magnitude or the indefinite character of the services the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year; and the Legislature shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of sections 80 and 81 shall have effect in relation to the making of any grant under sub-section (1) and to law to be made under that sub-section as they have effect in relation to the making of a grant with regard to any expenditure mentioned h1 the annual financial statement and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

84. (1) A bill or amendment making provision for any of the matters specified in clauses (a) to (f) of sub-section (1) of section 77 shall not be introduced or moved except on the recom-mendation of the Sadar-i-Riyasat, and a Bill making such provision shall not be introdu-ced in the Legislative Council:

Provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters afore-said by reason only that it provides for the. imposition of fines or other pecuniary penal-ties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation. would involve expenditure from the Consolidated Fund of the State shall not be passed by a House of the Legislature unless the Sadar-i-Riyasat has recommended to that House the consideration of the Bill.

PROCEDURE GENERALLY

85. (1) A House of the Legislature may make rules for regulating, subject to the provisions of this Constitution, its procedure and the con-duct of its business.

(2) Until rules are made under sub-section (1), the rules of procedure and standing orders in force immediately before the commencement of this Constituent Assembly while discharging the functions of the Legislative Assembly shall have effect in relation to each House of the Legislature subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be.

(3) The Sadar-i-Riyasat, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make- rules as to the procedure with respect to communications between the two Houses.

86. The Legislature may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in. the House of the Legislature in relation to any financial matter or to any Bill for the appropria-tion of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by either House of the Legislature under sub-section (I) of section 85 or with any rule of standing order having effect in relation to either House of the Legislature under sub-section (2) of that section such provisions shall prevail.

87. Business in the Legislature shall be transacted in Urdu or in English.

(1) Provided that the Speaker of the Legislative Assembly or the Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member to address the House in Hindi, or if he cannot adequa-tely express himself in any of the aforesaid languages, to address the House in his mother-tongue.

(2) The official records of the proceedings in the Legislature shall be kept in Urdu as well as in English.

(3) The text of all Bills and amendments there of moved in and of all Acts passed by the Legis-lature which shall be treated as authoritative, shall be in English.

88. No discussion shall take place in the Legislature with respect to the conduct of any Judge of the Supreme Court or of the High Court in the discharge of his duties.

89. (1) The validity of any proceedings in the Legis-lature shall not be called in question -on the gro-unds of any alleged irregularity of procedure.

(2) No officer or member of the Legislature in whom powers are vested by or under this Constitution for regulating procedure or the conduct of Business, or for maintaining order, in the Legislature shall be subject to the juris-diction of any court in respect of the exercise by him of those powers.

90. No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given by the Sadar-i-Riyasat.

Legislative power of the Sadar-i-Riyasat:

91. (1) If at any time, except when both Houses of the Legislature are in session, the Sadar-i-Riyasat is satisfied that circumstances exist which render it necessary for him to take immediate action; he may promulgate such Ordinances as the circums-tances appear to him to require. Provided that the power of making Ordinance under this Section shall extend only to those matters with respect to which the Legislature has power to make laws.

(2) An Ordinance promulgated under this section shall have the same force and effect as an Act of the Legislature assented to by the Sadar-i-Riyasat, but every such Ordinance:

(a) shall be laid before both the Houses of the Legislature, and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if be-fore tile expiration of that period a reso-lution disapproving it is passed by the Legislative Assembly and agreed to by Legislative Council, upon the resolution being agreed to by the Legislative Coun-cil, and -

(b) may be withdrawn at any time by the Sadar-i-Riyasat.

Explanation: - Where the Houses of the Legislature are summoned to re-assemble on different dates the period of six weeks shall be reckoned from the latter of those dates for the purposes of this sub-section.

Breakdown of Constitutional Machinery.

92. (1) If at any time the Sadar-i-Riyasat is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the Sadar-i-Riyasat may by Proclamation:

(a) assume to himself all or any of the func-tions of the Government of the State and all or any of the powers vested in or excercisable by anybody or authority in the State;

(b) make such incidental and consequential provisions as appear to the Sadar-i--Riyasat to be necessary or desirable for giving effect to the objects of the Procla-mation, including provisions for suspen-ding in whole or in part the operation of any provision of this Constitution rela-ting to any body or authority in the State:

Provided that nothing in this section shall authorised die Sadar-i-Riyasat to assume to himself any of the powers vested in or exer-cisable by the High Court or to suspend in whole or in part the operation of any provi-sion of this Constitution relating to the High Court.

(2) Any such Proclamation may be revoked or carried by a subsequent Proclamation.

(3) Any such Proclamation whether varied under sub-section (2) or not, shall, except where it is a Proclamation revoking a previous Proclama-tion, cease to operate on the expiration of six months from the date on which it divas first Issued.

(4) If the Sadar-i-Riyasat by a Proclamation under this section assumes to himself any of the powers of the legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature, and any reference in this Constitution to any Acts of or laws made by the Legislature shall be construed as including a reference to such law. No Proclamation under sub-section (1) shall be issued except with the concurrence of the President of India.

(6) Every Proclamation under this section shall, except where it is a Proclamation revoking a previous Proclamation, be laid before each house of the Legisiature as soon as it is convened.

PART VII

THE HIGH COURT

93. (1) There shall be a High Court for the State, consisting of a Chief Justice and two or more other judges.

(2) The High Court exercising jurisdiction in relation to the State Immediately before the commencement of this Constitution shall be the High Court for the State.

94. The High Court shall be a court of record and shall have all the powers of such a courts including the power to punish for contempt of itself or of the courts subordinate to it.

95. Every Judge of the High Court shall be appointed by the President by Warrant under his hand and seal after consultation with the Chief Justice of India, the Sadar-i-Riyasat, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and shall hold office until he attains the age of sixty years.

96. A person shall not be qualified for appointment as a Judge of the High Court unless he is a citizen of India, and:

(a) has for at least ten years held a judicial office in the State or in any other part of India; or

(b) has for at least ten years been an advocate of the State High Court or of any other High Court in India or of two or more such courts in succession.

Explanation: - For the purposes of this Section in omputing the period during which a person has been an advocate of a High Court. there shall be included any period during which the person has held judicial office after he became an advocate.

97. Every person appointed to be a Judge of the High Court, shall. before he enters upon his office, make an subscribe before the Sadar-i-Riyasat or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Fifth Schedule.

98. (1) There shall be paid to the Judges of the High Court such salaries as are specified in the Fourth Schedule.

(a) Every Judge shall be entitled to such allowan-ces and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by the Legislature, and until so determined, to such allowances and rights as are specified in the Fourth Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his dis-advantage after his appointment:

99. (1) A Judge of the High Court may, by writing under his hand addressed to the President, resign his office.

(2) A Judge of the High Court shall not be removed from his office except by an order of the President passed after an address by each House of the Legislature supported by a majority of the total membership of that House and by a majority of not less than two- thirds of the members of that House present and voting has been presented to the president in the same session for such removal on the ground of proved misbehaviour or incapacity.

(3) The Legislature may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under sub-section (2).

100. (1) When the office of the Chief Justice is vacant or when the Chief Justice is by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

(2) When any Judge of the High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of the Court until the permanent Judge has resumed his duties.

101. (1) The usual places of sitting of the High Court shall be Jammu and Srinagar.

(2) The Chief Justice shall, with the approval of the Sadar-i-Riyasat determine the number of Judges who shall sit from time to time at Jammu and at Srinagar for such period as may be deemed necessary.

(3) Whenever it appears to the Chief Justice that it is desirable that the High Courts should hold its sitting at a place other than Srinagar and Jummu, one or more Judges of the High Court as determined by him shall, with the previous approval of the Sadar-i-Riyasat, sit at such place.

102. Subject to the provisions of this Constitution and to the provisions of any law for the time being in force, the jurisdiction of and the law administered in the High Court and the respective powers of the Judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof, sitting alone or in Division Courts, shall be the same as immedia-tely before the commencement of this Constitution.

103. The High Court shall have power to issue to any person or authority, including in appropriate cases any Government within the State, directions, orders or writs. including writs in the nature of habeas

corpus, mandamus, prohibition, quo warranto and certiorari, or any of them. for any purpose other than those mentioned in clause (2A) of article 32 of the Constitution of India.

104. (1) The High Court shall have superintendence and control over all courts for the time being subject to its appellate or revisional jusrisdic-tion and all such courts shall be subordinate to the High Court.

(I) Without prejudice to the generality of the foregoing provision, the High court may:

(a) call for returns from such courts,

(b) make and issue general rules and prescribe forms for regulating the practice and pro-ceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such court.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advo-cates and pleaders practicing therein: Provided that any rules made, forms prescrib-ed or tables settled under sub-section (2) or sub-section(3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Sadar-i-Riyasat.

105. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution or the Constitution of India the deter-mination of which is necessary for the disposal of the case, it shall withdraw the case and may:

(a) either dispose of the case itself; or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgement on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgement.

106. No person who had held office as a Judge of the High Court after the commencement of this Con-stitution shall plead or act in any court or before any authority within the State.

107. (1) The High Court shall have and use as occa-sion may require a seal bearing a device and impression of the State emblem with an exergue or label surrounding the same with the inscription:

"The seal of the High Court of Jammu and Kashmir"

(2) The seal shall be delivered to. and kept in the custody of, the Registrar or such other officer of the court as the Chief Justice may designate in this behalf.

108. (1) Appointments of officers and servants of the High Court shall be made by the Chief Justice of the court or such other judge or officer of the court as he may direct:

Provided that the Sadar-i-Riyasat may by rule require that in such cases as may be specified in the rule no person not already attached to the court shall be appointed to any office connected with the court save after consulta-tion with the State Public Service Commis-sion.

(I) Subject to the provisions of any law made by the Legislature, the conditions of service of the officers and servants of the High Court shall be such as may be prescribed by rules made by the High Court with the approval of the Sadar-i-Riyasat.

(3) The administrative expenses of the High Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court' shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

SUBORDINATE COURTS

109. (1) Appointment of persons to be, and the postings: and promotion off district judges in the State shall be made by the Sadar-i-Riyasat in con-sultation with the High Court.

(2) A person not already in the service of the : State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or pleader and is recommended by the High Court for appointment.

110. Appointment of persons other than district judges to the judicial service of the State shall be made by the Sadar-i-Riyasat in accordance with rules made by him in that behalf after consulation with the Public Service Commission and with the High Court.

111. The control over district courts and courts sub-ordinate thereto including the posting and promo-tion of, and the grant of leave to, persons belong-ing to the judicial service of the State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this section shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

112. In this part...

(a) the expression "district judge" includes additional district judge, assistant district judge, sessions judge, additional sessions judge and assistant sessions judge:

(b) the expression "judical service" means a service consisting exclusively of persons inten-ded to fill the post of district judge, and other civil judicial posts inferior to the post of dis-trict judge.

113. The Sadar-i-Riyasat may be public notification direct that the foregoing provisions of this part and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magis-trates in the State as they apply in relation to any persons appointed to the judicial service of the State Subject to such exceptions and modifications as may be specified in the notification.

PART VIII

FINANCE, PROPERTY AND CONTRACTS

114. No tax shall be levied or collected except by authority of law.

115. (1) Subject to the provisions of section 116, all revenues received by the Government, all loans raised by the Government by the issue of treasury bills, loans or ways and means advances and all moneys received by Government in repayment of loaned shall form one consolidated fund to be entitled "the Consolidated Fund of the State."

(2) All other public moneys received by or on behalf of the Government shall be credited to the public account of the State.

(3) No moneys out of the Consolidated Fund of the State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

116. The Legislature may by law establish a Contingency Fund in the nature of an impress to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Sadar-i--Riyasat to enable advances to be made by him out of such fund for the purposes of meeting unforeseen expenditure pending authorisation of such expendi-ture by Legislature by law under section 82 or 83.

117. The State may make any grants for any public purpose, notwithstanding that the purpose is not one with expect to which the Legislature may make.

118. The custody of the Consolidated Fund of the State and the Contingency Funds of the State, the payment of moneys into such funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Fund received by or on behalf of the Government, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature and, until provision in that behalf is so made, shall be regulated by rules made by the Sadar-i-Riyasat.

119. All moneys received by or deposited with:

(a) any officer employed in connection with the affairs of the State in his capacity as such, other than revenues or public moneys raised or received by the Government; or

(b) an, court within the State to the credit of any cause, matter, account or persons, shall be paid into the public account of the State.

120. Any property within the State which, if this Constitution had not come up into operation, would have accrued to the Government or any other authority hi the State by escheat or lapse, or as bona-vacantia for want of a rightful owner, shall vest in the State.

121. (1) The executive power of the State shall extend, subject to any law made by the State Legisla-ture, to the carrying on of any trade or busi-ness, and to the grant, scale, disposition or mortgage of any property held for the purposes of the State, and to the purchase or acquisi-tion of property for those purposes and to the making of contracts.

(2) All property acquired for the purposes of the State shall vest in the State.

122. (1) All contracts made in the exercise of the executive power of the State shall be expressed to be made by the Sadar-i-Riyasat and all such contracts and all assurance of property made in the exercise of that power shall be executed on behalf of the Sadar-i-Riyasat by such persons and in such manner as he may direct or authorise.

(2) The Sadar-i-Riyasat shall not be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes any of enact-ment relating to the Government of the State heretofore in force, nor shall any person making or executing any such contract or assurance on his behalf be personally liable in respect thereof.

123. The Government may sue or be sued by the name of the State of Jammu and Kashmir and may, subject to any provisions which may be made by Act of the Legislature enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to its affairs in the like cases as the State might have sued or been sued if this Constitution had not been enacted.

PART IX

THE PUBLIC SERVICE

124. Subject to the provisions of this Constitution, the Legislature may by law regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State:

Provided that it shall be competent for the Sadar--i-Riyasat or such person as he may direct, to make rules regulating the recruitment and the conditions of services of persons appointed, to such services and posts until provisions in that behalf is made by or under an Act of the Legislature under this section, and any rules so made shall effect subject to the provisions of any such Act.

125. (1) Except expressly provided by this Constitution, every person who is a member of a civil service of the State or holds any civil post under the State hold office during the pleasure of the Sadar-i-Riyasat.
(2) Notwithstanding that a person holding a civil post under the State holds office during the pleasure of the Sadar-i-Riyasat, any contract under which a person, not being a member of a civil service of the State, is appointed to hold such a post man, if the Sadar-i-Riyasat deems it necessary in order to secure the services of a person having special qualifications, provide for tile payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any miscon-duct on his part required to vacate that post.

126. (1) No person who is a member of a civil service of tile State or holds a civil post under the State shall be distressed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of show-ing cause against the action proposed to be taken in regard to him:

Provided that this sub-section shall not apply:

(a) where a person is dismissed or removed or reduced in rank on the ground of con-duct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the Sadar-i-Riyasat is satisfied that in the interests of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an oppor-tunity of showing cause under sub-section.

(4) The decision thereon of the authority empo-wered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

127. Until other Provisional is made in this behalf under the constitution, all the laws in force im-mediately before the commencement of this Consti-tution and applicable to any public service or any post which continues to exist after the commence-ment of this Constitution as service or post under the- State, shall continue in force so far as consistent with the provisions of this Constitu-tion.

THE PUBLIC SERVICE COMMISSION

128. There shall be a Public Service Commission (here-inafter referred to in this Part as "the Commi-ssion" for the State.

129. (1) The Chairman and other members of the Commission shall be appointed by the Sadar-i-Riyasat:

Provided that as nearly as may be one-half of the members of the Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Government.

(2) A member of the Commission shall hold office of a terms of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that:

(a) a member of the Commission may, by writing under his hand addressed to the Sadar-i-Riyasat, resign his office

(b) a member of the Commission may be removed from his office in the manner hereinafter provided.

(3) A person who holds office as a member of the Commission shall on the expiration of his term of office, be ineligible for re-appointment to that office.

130. (1) Subject to the provisions of sub-section (3), the Chairman or any other member of the Commission shall only be removed from his office by order of the Sadar-i-Riyasat on the ground of misbehaviour after the High Court on reference being made to it by the Sadar-i--Riyasat, has, on inquiry held in that behalf, reported that the Chairman or such other member, as the case may be ought on any such ground to be removed.

The Sadar-i-Riyasat may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the High Court under sub-section (l) until the Sadar-i-Riyasat has passed orders on receipt of the report of the High Court on such reference.

(3) Notwithstanding anything in sub-section (1) the Sadar-i-Riyasat may by order remove from office the Chairman or any other mem-ber of the Commission if the Chairman on. such other member, as the case may be -

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment out side the duties of his office; or

(c) is, in the opinion of the Sadar-i-Riyasat, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of the Commission is or becomes in anyway concern-ed or interested in any contract or agreement made by or on behalf of the Government of the State, the

Government of India or the Government of any other State in India or participates in anyway in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty misbehavi-our.

131. The Sadar-i-Riyasat may be regulations:

(a) determine the number of members of the Commission and their conditions of service; and

(b) make provision with respect to the num-ber of members of the staff of the Commission and - their conditions of service;

Provided that the conditions of service of a member of the Commission shall not be varied to his disadvantage after his ap-pointment.

132. On ceasing to hold office the Chairman and the members of the Commission shall be ineligible for further office under the Government of the State, but a member other than the Chairman shall be eligible for appointment as a Chairman of the Commission.

Explanation: - For the purposes of this sec-tion; the office of Minister or Deputy Minister shall not be deemed to be an office under the Government of the state.

133. (1) It shall be the duty of the Commissions to conduct examinations for appointment to the services of the State.

(2) The Commission shall be consulted -

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidate for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government including memorials or petitions relating to such matters; and it shall be the duty of the Commission to advise on any matter so referred to them or on any other matter which the Sadar-i--Riyasat may refer to them:

Provided that the Sadar-i-Riyasat may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Commission to be consulted.

(3) Nothing in sub-section (2) shall require the Commission to be consulted as respects the manner in which a provision may be made by the State for the reservation of appointment or posts in favour of any class of permanent residents which in the opinion of the Govern-ment is not adequately represented in the services under the State.

(4) All regulations made under the proviso to sub-section (2) by the Sadar-i-Riyasat shall be laid for not less than fourteen days before each House of the Legislature as soon as possible after they made, and shall be subject to such modifications, whether by way or repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid.

134. If the office of the Chairman of the Commission becomes vacant or if the Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall until some person appointed under sub-section (1) of section 129 to the vacant office has entered on the duties thereof or, as the case may be until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the Sadar-i-Riyasat may appoint for the purpose.

135. An Act made by the Legislature may provide for the exercise of additional functions by the Commission as respects the services of the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

136. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the members or the staff of the Com-mission, shall be charged on the Consolidated Fund of the State.

137. It shall be the duty of the Commission to present annually to the Sadar-i-Riyasat a report as to the work done by the Commission and the Sadar-I--Riyasat, on receipt of such report, shall cause a copy thereof together with a memorandum explai-ning, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature.

PART X

ELECTIONS

138. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, the elections held under Part VI shall, be vested in an Election Commissio-ner to be appointed by the Sadar-i-Riyasat.

(2) The Sadar-i-Riyasat, may, for such period as he may deem necessary appoint one or more Deputy Election Commissioners to assist the Election Commissioner in the per-formance of the functions conferred by sub-section (1).

(3) subject to the provisions of any law made by the Legislature, the Conditions of service of the Election Commissioner and the Deputy Election Commissioner shall be such as the Sadar-i-Riyasat may by order specify.

(4) The Sadar-i-Riyasat may make acts viable to the Election Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commissioner by sub-section (1).

139. There shall be one general electoral roll for every territorial constituency for election to either House of the Legislature and no person shall be ineligible for inclusion in any such roll or claim to be inclu-ded in any special electoral roll for any such consti-tuency on grounds only of religion, race, caste, sex or any of them.

140. The elections to the Legislative Assembly shall be on the basis of adult suffrage; that is to say, every person who is a permanent resident of the State and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the Legislature and is not otherwise disqualified under this Constitution or any law made by the Legislature on the ground of non-residence, unsoundness of mind, crime or corruptor illegal practice, shall be registered as a voter at any such election.

Subject to the provisions of this Constitution, the Legislature may from time to time by law make provision with respect to all matters relating to, or in connection with elections to either House of the Legislature, including the preparation of elec-toral rolls, the delimitation of constituencies, appointment of election tribunals and all other matters necessary for securing the due constitution of the two Houses.

142. Notwithstanding anything in this Constitution:

(a) the validity of any law relating to the delimita-tion of territorial constituencies for the pur-pose of electing members of the Legislative Assembly or the allotment of seats to such constituencies, made or purporting to be made under section 141, shall not be called in ques-tion in any court;

(b) no election to either House of the Legislature shall be called in question except by an elec-tion petition present to such authority and in such manner as may be provided for by or under any law made by the Legislature.

PART XI

MISCELLANEOUS PROVISIONS

143. (1) The Sadar-i-Riyasat shall not be answerable to any court for the exercise of performance of the powers and duties of his office or for any act done or purposing to be done by him in the exercise and performance of those -powers and duties.

Provided that nothing in this subjection-sec-tion shall be construed as restricting the right of any person to bring appropriate proceed-ings against the Government.

(2) No criminal proceedings whatsoever shall be instituted or continued against the Sadar-I--Riyasat in any court during his term of office. No process for the arrest or imprisonment of the Sadar-i-Riyasat shall issue from any court during his term of office.

No civil proceedings in which relief is claimed against the Sadar-i-Riyasat shall be instituted during his term of office in any court in res-pect of any act done or purporting to be done by him in his personal capacity, whether be-fore or after he entered upon his office as Sadar-i-Riyasat, until the expiration of two months next after notice in writing has been delivered to the Sadar-i-Riyasat or left at his office stating the nature of the proceedings the cause of action therefor, the name, descri-ption and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

144. The flag of the State shall be rectangular in shape and red in colour with three equidistant white vertical stripes of equal with next to the staff and a white plough in the middle with the handle facing the stripes.

The ratio of the length of the flag to its width shall be 3:2.

145. The official language of the State shall be Urdu, but the English language shall, unless the Legisla-ture by law otherwise provides continue to be used for all the official purpose of the State for which it was being used immediately before the com-mencement of this Constitution.

. The Sadar-i-Riyasat shall, as soon as may be, after the commencement of the Constitution establish an Academy of Arts, Culture and Language, where opportunities will be afforded for the development of Art and Culture of the State and for the development of Hindi, Urdu and other regional languages of the State specified in the Sixth Schedule.

PART XII

AMENDMENTS OF THE CONSTITUTION

147. An amendment of this constitution may be initia-ted only by the introduction of a Bill for the pur-pose in the Legislative Assembly and when the Bill is passed in each House by a majority of not less than two-thirds of the total membership of at the House, it shall be presented to the Sadar-i-Riyasat for his assent and, upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that a Bill providing for the abolition of the Legislative Council may be intro-duced in the Legislative Assembly and passed by it majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting:

Provided further that no Bill or amendment seeking to make any change in:

(a) this section;

(b) the provisions of the sections 3 and 5; or

(c) the provisions of the constitution of India as applicable in relation to the State;

shall be introduced or moved in either house of the Legislature.

142 MISCELLANEOUS DOCUMENTS

142.1 Claim over Laddakh

(*English translation of the Persian text of the treaty signed at Leh on second of Asuj 1899 Bikrami - September 1842 - between the Government of Maharajah Gulab Singh and the Government of Tibet.*)

Whereas we the Officer, of the Lhasa country, viz., firstly, Kalon Surkhan, and secondly, Depon Pishi, commander of the forces of the Empire of China, on the one hand and Dewan Hari Chand and Wazir Ratanu, on behalf of Maharajah Gulab Singh, on the other, agree together and swear before God that the friendship between Maharajah Gulab Singh and the Emperor of China and the Lama Guru Sahib Lassawalla will be kept and observed till eternity: no disregard will be shown to anything agreed upon in the presence of God; and we will respect the boundary of Laddakh and the countries bordering on it as fixed since olden times. We will carry on the trade in Shawl, Pasham and Tea as before by way of Laddakh; and if anyone of the Shri Maharajah's enemies comes to our territories and says anything against the Rajah, we will not listen to him, and will not allow him to remain in our country, and whatever traders come from Laddakh shall experience no difficulty from our side. We will not act otherwise but in the same manner as it has been prescribed in this meeting regarding the fixing of the Laddakh frontier and the keeping open of the road for the traffic in Shawl, Pasham and Tea. We will observe our pledge to God, Gaitri and Pasi, Wazir Mian Khushal Chu is witness.

Written on the second day of Asuj 1899 (September, 1842)

142.1.1 The Tibetan version of the treaty

Kalon Surkhan and investigating officer Depon Pishi on behalf of His Holiness the Dalai Lama and his officials, and Shri Khalsaji Absarani, Shri Maharajah, Lala Golana, the representative of Khashur Shag Golam Mohammed through an interpreter, Amirshah (on behalf of Gulab Singh) have arrived at Laddakh and discussed the terms of the peace treaty. In the first place the two contracting parties have decided to sink all past differences and ill-feeling and to consider the friendship and unity between the two kings re-established for ever. This peace treaty between Shri Maharajah Gulab Singh and Shri Guru Lama of Lhasa has been restored and there will be no cause for enmity in future in the two nations regarding their respective frontiers. Shri Maharajah Sahib has declared, invoking God as his witness, that he will not deviate from the terms of the agreement. It is agreed that the two brother kings of Laddakh and the Queen shall remain peacefully in Laddakh and shall not indulge in any intrigue, besides trying to promote the friendly relations between the two nations. The Laddakhis shall send the annual tribute to His Holiness the Dalai Lama and his Ministers unfailingly as heretofore and the Shri Maharajah Sahib will not interfere with this arrangement. No restriction shall be laid on the mutual export of commodities e.g., tea, piece goods, etc. and trading shall be allowed according to the old established custom. The Laddakhis shall supply the Tibetan Government traders with the usual transport animals and arrange for their accommodation as heretofore, and the Tibetans will also do the same to the Laddakhis who come to Tibet with the annual tribute. It is agreed that no trouble will be occasioned to the Tibetan Government by the Laddakhis. We invoke God to bear witness to this agreement whereby the friendly relations between Shri Maharajah Sahib and the Lhasa Government shall continue as between members of the same family. This is signed on the second day of the month of Assuj, year 1899.

142.2 Letter from Maharaja Hari Singh to Lord Mountbatten on the eve of Pak invasion on J&K in 1947

My dear Lord Mountbatten,

I have to inform Your Excellency that a grave emergency has arisen in my State and request the immediate assistance of your Government. As Your Excellency is aware,the State of Jammu and Kashmir has not acceded to either the Dominion of India or Pakistan. Geographically my State is contiguous wit h both of them. Besides, my State has a common boundary with the Union of Soviet Socialist Republics and with China. In their external relations the Dominion of India and Pakistan cannot ignore this fact. I wanted to take time to decide to which Dominion I should accede or whether it is not in the best interests of both the Dominions and of my State to stand independent, of course with friendly and cordial relations with both. I accordingly approached the Dominions of India and Pakistan to enter into standstill agreement with my State. The Pakistan Government accepted this arrangement. The Dominion of India desired further discussion with representatives of my Government. I could not arrange this in view of the developments indicated below. ln fact the Pakistan Goernment under the standstill agreement is operating the post and telegraph system inside the State. Though we have got a standstill agreement with the Pakistan Government, lhe Govemment permitted a steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes wnh modern weapons have been allowed to infiltrate into the State, at first in the Poonch area, then from Sia1kot and finally in a mass in the area adjoining-Hazara district on the Ramkote side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at several points simultaneously, so that it has become difficult to stop the wanton destruction of life ad property and the looting of the Mahura power house, which supplies electric current to the whole of Srinagar and which has been burnt. The number of women who have been kidnpped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer capital of my government, as a first step to overrunning the whole State.The mass infiltration of tribesman drawn from distant areas of the North-West Frontier Province, coming regularly in motortrucks, using the Manwehra-Mazaffarabad road and fully armed with up-to-date weapons, cannot possibly be done without the knowledge of the Provincial Govemment of the North-West Frontier Province and the Government of Pakistan. Inspite of repeated appeals made by my Government no attempt has been made to check these raiders or to stop them from coming into my State. In fact, both radio and the Press of Pakistan have reported these occurences. The Pakistan radio even put out the story that a provisional government has been set up in Kashmir. The people of my State, both Muslims and non-Muslims, generally have taken no part at all.

With the conditbns obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the instrument of accession for acceptance by your Government. The other alternative is to leave my state and people to free booters. On this basis no civilised government can exist or be maintained.

This alternative I will never allow to happen so long as I am the ruler of the State and I have life to defend my country. I may also inform your Excellency's Government that it is my intention at once to set up an interim government and to ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State is to be saved, immediate assistance must be available at Srinagar. Mr. V.P. Menon is fully aware of the gravity of the situation and will explain it to you, if further explanation is needed.

In haste and with kindest regards,

Yours sincerely,

Hari Singh
October 26, 1947

142.2.1 Reply from Lord Mountbatten to Maharaja Hari Singh

My dear Maharaja Sahib,

Your Highness' letter dated 26 October 1947 has been delivered to me by Mr. V.P. Menon. In the circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.

Meanwhile, in response to Your Highness' appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir, to help your own forces to defend your territory and to protect the lives, property, and honour of your people. My Government and I note with satisfaction that Your Highness has decided to invite Sheikh Abdullah to form an interim Government to work with your Prime Minister.

Mountbatten of Burma
October 27, 1947

142.3 Indian Complaint to the Security Council Letter Dated January 1, 1948 from the Representative of India to the President of the Security Council (S/628)

The Government of India have instructed me to transmit to you the following telegraphic communication:

"1. Under Article 35 of the Charter of the United Nations, any Member may bring any situation whose continuance is likely to endanger the maintenance of international peace and security to the attention of the Security Council. Such a situation now exists between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and of tribesmen from the territory immediately adjoining Pakistan on the north-west, are drawing from Pakistan for operations against Jammu and Kashmir, a State which has acceded to the Dominion of India and is part of India. The circumstances of accession, the activities of the invaders which led the Government of India to take military action against them, and the assistance which the attackers have received and are still receiving from Pakistan are explained later in this memorandum. The Government of India request the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance, which is an act of aggression against India. If Pakistan does not do so, the Government of India may be compelled, in self-defence, to enter Pakistan territory, in order to take military action against the invaders. The matter is, therefore, one of extreme urgency and calls for immediate action by the Security Council for avoiding a breach of international peace.

"2. From the middle of September 1947, the Government of India had received reports of the infiltration of armed raiders into the western parts of Jammu province of Jammu and Kashmir State; Jammu adjoins West Punjab, which is a part of the Dominion of Pakistan. These raiders had done a great deal of damage in that area and taken possession of part of the territory of the State. On 24 October, the Government of India heard of a major raid from the Frontier Province of the Dominion of Pakistan into the Valley of Kashmir. Some two thousand or more fully armed and equipped men came in motor transport, crossed over to the territory of the State of Jammu and Kashmir, sacked the town of Muzaffarabad, killing many people and proceeded along the Jhelum Valley road towards Srinagar, the summer capital of Jammu and Kashmir State. Intermediate towns and villages were sacked and burnt, and many people killed. These raiders were stopped by Kashmir State troops near Uri, a town some fifty miles from Srinagar, for some time, but the invaders got around them and burnt the power house at Mahora, which supplied electricity to the whole of Kashmir.

"3. The position, on the morning of 26 October, was that these raiders had been held by Kashmir State troops and part of the civil population, who had been armed, at a town called Baramulla. Beyond Baramulla there was no major obstruction up to Srinagar. There was immediate danger of these raiders reaching Srinagar, destroying and massacring large numbers of people, both Hindus and Muslims. The State troops were spread out all over the State and most of them were deployed along the western border of Jammu province. They had been split up into small isolated groups and were incapable of offering effective resistance to the raiders. Most of the State officials had left the threatened areas and the civil administration had ceased to function. All that stood between Srinagar and the fate which had overtaken the places en route followed by the raiders was the determination of the inhabitants of Srinagar, of all communities, and practically without arms, to defend themselves. At this time Srinagar had also a large population of Hindu and Sikh refugees who had fled there from West Punjab owing to communal disturbances in that area. There was little doubt that these refugees would be massacred if the raiders reached Srinagar.

"4. Immediately after the raids into Jammu and Kashmir State commenced, approaches were informally made to the Government of India for the aeceptance of the accession of the State to the Indian Dominion. (It might be explained in parenthesis that Jammu and Kashmir from a State whose ruler, prior to the transfer of power by the United Kingdom to the Dominions of India and Pakistan, had been in treaty relations with the British Crown, which controlled its foreign relations ceased with the transfer of power on 15 August last, and Jammu and Kashmir lilce other States acquired the right to accede to either Dominion.)

"5. Events moved with great rapidity, and the threat to the Valley of Kashmir became grave. On 26 October, the ruler of the State, His Highness Maharaja Sir Hari Singh, appealed urgently to the Government of India for military help. He also requested that the Jammu and Kashmir State should be allowed to accede to the Indian Dominion. An appeal for help was also simultaneously received by the Government of India from the largest popular organization in Kashmir, the National Conference, headed by Sheikh Mohammed Abdullah. The Conference further strongly supported the request for the State's accession to the Indian Dominion. The Government of India were thus approached not only officially by the State authorities, but also on behalf of the people of Kashmir, both for military aid and for the accession of the State to India.

"6. The grave threat to the life and property of innocent people in the Kashmir Valley and to the security of the State of Jammu and Kashmir that had developed as a result of the invasion of the Valley demanded immediate decision by the Government of India on both the requests. It was imperative on account of the emergency that the responsibility for the defence of Jammu and Kashmir State should be taken over by a Government capable of discharging it. But, in order to avoid any possible suggestion that India had utilised the State's immediate peril for her own political advantage, the Government of India made it clear that once the soil of the State had been cleared of the invader and normal conditions restored, its people would be free to decide their future by the recognized democratic methods of a plebiscite or referendum which, in order to ensure complete impartiality, might be held under international auspices.

"7. The Government of Indian felt it their duty to respond to the appeal for armed assistance because:

"(1) They could not allow a neighbouring and friendly State to be compelled by force to determine either its internal affairs or its external relations;

"(2) The accession of Jammu and Kashmir State to the Dominion of India made India really responsible for the defence of the State.

"8. The intervention of the Government of India resulted in saving Srinagar. The raiders were driven back from Baramulla to Uri and are held there by Indian troops. Nearly 19,000 raiders face the Dominion forces in this area. Since operations in the Valley of Kashmir started, pressure by the raiders against the western, and south-western border of Jammu and Kashmir State had been intensified. Exact figures are not available. It is understood, however, that nearly 15,000 raiders are operating a gainst this part of the State. State troops are besieged in certain areas. Incursions by the raiders into the State territory, involving murder, arson, loot, and the abduction of women continue. The booty is collected and carried over to the tribal areas to serve as an inducement to the further recruitment of tribesmen to the ranks of the raiders. In addition to those actively participating in the raid, tribesmen and others, estimated at 100,000 have been collected in different places in the districts of West Punjab bordering Jammu and Kashmir State, and many of them are receiving military training under Pakistani nationals, including officers of the Pakistan Army. They are looked after in Pakistan territory, fed, clothed, armed and otherwise equipped, and transported to the territory of Jammu and Kashmir State with the help, direct and indirect, of Pakistani officials, both military and civil.

"9. As already stated, the raiders who entered the Kashmir Valley in October came mainly from the tribal areas to the north-west of Pakistan and, in order to reach Kashmir, passed through Pakistan territory. The raids along the south-west border of the State, which had preceded the invasion of the valley proper, had actually been conducted from Pakistan territory, and Pakistan nationals had taken part in them. This process of transmission across Pakistan territory and untilisation of that territory as a base of operations against Jammu and Kashmir State continues. Recently, military operations against the western and south-western borders of the State have been intensified, and the attackers consist of nationals of Pakistan as well as tribesmen. These invaders are armed with modern weapons, including mortars and medium machine-guns, wear the battle dress of regular soldiers and, in recent engagements, have fought in regular battle formation and are using the tactics of modern warfare. Man-pack wireless sets are in regular use and even mark V mines have been employed. For their transport the invaders have all along used motor

vehicles. They are undoubtedly being trained and to some extent led by regular officers of the Pakistan Army. Their rations and other supplies are obtained from Pakistan territory.

"10. These facts point indisputably to the conclusion

"(a) that the invaders are allowed transit across Pakistan territory;

"(b) that they are allowed to use Pakistan territory as a base of operations;

"(c) that they include Pakistan nationals;

"(d) that they draw much of their military equipment, transportation, and supplies (including petrol) from Pakistan;

and

"(e) that Pakistan officers are training, guiding, and otherwise actively helping them.

"There is no source other than Pakistan from which they could obtain such quantities of modern military equipment, training or guidance. More than once, the Government of India had asked the Pakistan Government to deny to the invaders facilities which constitute an act of aggressian and hostility against India, but without any response. The last occasion on which this request was made was on 22 December, when the Prime Minister of India handed over personally to the Prime Minister of Pakistan a letter in which the various forms of aid given by Pakistan to the invaders were briefly recounted and the Government of Pakistan were asked to put an end to such aid promptly; no reply to this letter has yet been received in spite of a telegraphic reminder sent on 26 December.

"11. It should be clear from the foregoing recital that the Government of Pakistan are unwilling to stop the assistance in material and men which the invaders are receiving from Pakistan territory and from Pakistan nationals, including Pakistan Government personnel, both military and civil. This attitude is not only un-neutral, but constitutes active aggression against India, of which the State of Jammu and Kashmir forms a part.

"12. The Government of India have exerted persuasion and exercised patience to bring about a change in the attitude of Pakistan. But they have failed, and are in consequence confronted with a situation in which their defence of Jammu and Kashmir State is hampered and their measures to drive the invaders from the territory of the State are greatly impeded by the support which the raiders derive from Pakistan. The invaders are still on the soil of Jammu and Kashmir and the inhabitants of the States are exposed to all the atrocities of which a barbarous foe is capable. The presence, in large numbers, of invaders in those portions of Pakistan territory which adjoin parts of Indian territory other than Jammu and Kashmir State is a menace to the rest of India. Indefinite continuance of the present operations prolongs the agony of the people of Jammu and Kashmir, is a drain on India's resources and a constant threat to the maintenance of peace between India and Pakistan. The Government of India have no option, therefore, but to take more effective military action in order to rid Jammu and Kashmir State of the invader.

"13. In order that the objective of expelling the invader from Indian territory and preventing him from launching attacks should be quickly achieved, Indian troops would have to enter Pakistan territory; only thus could the invader be denied the use of bases and cut off from his sources of supplies and reinforcements in Pakistan. Since the aid which the invaders are receiving from Pakistan is an act of aggression against India, the Government of India are entitled, under international law, to send their armed forces across Pakistan territory for dealing effectively with the invaders. However, as such action might involve armed conflict with Pakistan, the Government of India, ever anxious to proceed according to the principles and aims of the Charter of the United Nations, desire to report the situation to the Security Council under Article 35 of the Charter. They feel justified in requesting the Security Council to ask the Government of Pakistan.

"(1) to prevent Pakistan Government personnel, military and civil from participating or assisting in the invasion of Jammu and Kashmir State;

"(2) to call upon other Pakistani nationals to desist from taking any part in the fighting in Jammu and Kashmir State;

"(3) to deny to the invaders: (a) access to any use of its territory for operations against Kashmir, (b) military and other supplies, (c) all other kinds of aid that might tend to prolong the present struggle.

"14. The Government of India would stress the special urgency of the Security Council taking immediate action on their request. They desire to add that military operations in the invaded areas have, in the past few days, been developing so rapidly that they must, in self- defence, reserve to themselves the freedom to take, at any time when it may become necessary, such military action as they may consider the situation requires.

"15. The Government of India deeply regret that a serious crisis should have been reached in their relation with Pakistan. Not only is Pakistan a neighbour but, in spite of the recent separation, India and Pakistan have many ties and many common interests. India desires nothing more earnestly than to live with her neighbour-State on terms of close and lasting friendship. Peace is to the interest of both States; indeed to the interests of the world. The Government of India's approach to the Security Council is inspired by the sincere hope that, through the prompt action of the Council, peace may be preserved.

"16. The text of this reference to the Security Council is being telegraphed to the "Government of Pakistan."

142.4 Letter of the Maharaja Hari Singh to Sardar Patel

According to the published Correspondence of Sardar Patel, Volume One, Maharaja Hari Singh wrote to the Sardar on January 31, 1948, a long letter giving vent to his agony. In the course of this letter, he wrote: "The military situation as you know has been quite depressing since the arrival of the Indian troops. Except the first gains in the Kashmir Valley there has been a debt balance throughout so far as achievements are concerned.

"The Indian troops arrived in the Valley on 27 October, at that time we were in possession of about 3/4th of Poonch and the whole of the Mirpur district. We had by then lost only small bits of Poonch and Muzaffarabad district. After the recapture of Baramulla and Uri, there has been a standstill. Two months have passed and the Indian troops are still at Uri. They attempted to venture to the town of Poonch and though they reached it, it was at a great cost and the road was eventually lost. In the Poonch Jagir, which was held by the state troops inch by inch, we had to withdraw and eventually lost the whole of the Jagir except the town itself, where about 40,000 people are besieged alongwith 4 battalions (3 state and 1 Indian). The situation is by no means satisfactory. I may mention that in the August disturbances, with two battalions of the state troops we cleared the whole of Poonch Jagir, peace was restored, the whole of the revenue was realised and the administration was functioning normally. It was only in the second week of October that trouble again began in Poonch and our troops resisted it till about the end of December. But as no help was given, they had eventually to fall back on Poonch town..."

He went on: "In Mirpur district, at the time when the Indian forces arrived, we are still holding Mangla and our territory along the Jehlum Canal bank, but during the past two months we have lost Mangla, Alibeg, Gurdwara, and the town of Mirpur, the town of Bhimber and the villages of Deva and Battala, the town of Rajouri and the whole of the area adjoining Chhamb, Naoshera. Jhangar, a key-place both for Mirpur and Kotli, was lost after a defeat. These defeats have been a heavy blow for us and have also undermined the prestige of the Indian forces. Not a single town has so far been recovered by the Indian troops. The people judge an army from results and not from propaganda carried on about it. On the Kathua-Sialkot border attacks have been intensified. Everyday there is one raid after another. A number of villages have been burnt, people have been looted, women abducted and there have been killings also. The result has been that all the border villages have been vacated and we have about 70,000 to 80,000 refugees in the city of Jammu. Crops, houses and valuables have been lost. Most of the people are also vacating Jammu and its suburbs and are going to West Punjab. The situation, therefore, is worsening everyday.

142.4.1 Name of the Indian Army getting into the mud

"The name of the Indian Army is getting into the mud in spite of its brilliant record. I was a member of the War Cabinet. I travelled in war zones during the Great war. The name of the Indian Army was at its highest pitch and it pains me to see that the name of the Indian Army has become a topic of every tongue during these days and it is daily losing prestige. Some people think that it is not the fault of the Army but the fault of the policy that is being followed: others feel that it is the fault of the commanders who are quite new to the job. People who would have had to wait for 10 to 15 years to become generals have been put in charge of operations. Opinions differ, but the fact is that the name of the Army is in the mud. Sardar Baldev Singh was here for a day. He has heard from our politicians, members of the public and from me and my Prime Minister all that everyone had to say. He told me secretly that he had ordered certain actions to be taken. I told him that a mere order is nothing unless it is implemented. When you kindly spent two days with us here, a number of decisions were taken and you gave instructions in certain matters. Since your departure nothing has been done and, as I have said, we had more serious attacks. The effort on the part of Pakistan is gaining ground everyday. Their morale owing to success is going up. They loot property, they take away cattle and women and when they go back to Pakistan, they incite people and tell them how much loot and what benefits there are to raid our territory. On the other hand, our morale is rapidly going down. So far as the people are concerned, they are thoroughly demoralised and they start fleeing as soon as there is even a rumour of a raid. Even people living at distant places start

fleeing when they see fire five or six miles from their villages. So far as the Indian forces are concerned, they do not leave their apportioned places to meet the raiders. There are no mobile columns to meet them. The work is felt to a few Home Guards or to a platoon or so of very tired state forces. How can it be possible for them to engage 500 or 1,000 raiders ? Last time you ordered guerrillas to come into the state and take over this work. As far as I know, no guerrillas have arrived so far...

"In the situation, therefore, my position as Ruler has become very anamolous ant one of great perplexity. People in the State continue sending me telegrams and asking for help. Our civil administration is in the hands of the National Conference and military operations in the hands of the Indian Union. I have no voice or power either on the civil or military side. The State forces are under the Indian Army Commander. The result, therefore, is that I have just to watch the terrible situation in a helpless manner, to look on at the abduction of women, killing and loot of my people, without power to give them any redress whatever. People continue to approach me everyday and they still think that it lies in my power to give them relief and redress. You will realise that my position is getting most awkward every day, so long as the military situation is adverse to us and refugees continue pouring in the city and daily raids from Pakistan keep on coming without any reply from us."

He then went on to say: "Apart from the military situation, the reference to the UNO and the proceedings that are hanging fire there are causing great uncertainty and perplexity not only to me but to every Hindu and Sikh in the State as well as to those who belong to the National Conference. The feeling is strongly gaining ground that the UN Security Council will take an adverse decision and that the State will eventually have to accede to Pakistan as a result of what the Security Council will decide. The Hindus and Sikhs have, therefore, started going away from the State, as they anticipate that the result of the UNO decision will be the same as what happened in West Punjab and therefore it is much better to clear out of the State before that eventuality arises. The National Conference leaders also feel that they may eventually be let down by accepting the decision of the Security Council and what would be disastrous for them.

"My position in this matter is also precarious. You know I definitely acceded to the Indian Union with the idea that the Union will not let us down and the State would remain acceded to the Union and my position and that of my dynasty would remain secure. It was for this reason that I accepted the advice of the Indian Union in the matter of internal administration. If we have to go to Pakistan, it was wholly unnecessary to accede to India or to mould the internal administration according to the desire of the Indian Union. I feel that the internal administration or the question of accession is wholly foreign to the jurisdiction of the Security Council. The Indian Union only referred a limited question to the Security Council, but the whole issue has been enlarged and not only the matter of aggression by one Dominion over the other is being considered by the Security Council but internal questions of the formation of the Interim Government and the matter of accession have all been taken notice of by them. It was a wrong step in going to Security Council and then agreeing to the enlargement of the agenda before that Council. As soon as the Council enlarged the agenda, the Indian Union should have withdrawn the reference and ended the matter.

"In the situation described above, a feeling comes to my mind as to the possible steps that I may take to make, so far as I am concerned, a clean state of the situation. Sometimes I feel that I should withdraw the accession that I have made to the Indian Union. The Union provisionally accepted the accession and if the Union cannot recover back our territory and is going eventually to agree to the decision of the Security Council which would result in handing us over to Pakistan, then there is no point in sticking to the accession of the State to the Indian Union. For the time being, it may be possible to have better terms from Pakistan, but that is immaterial, because eventually it would mean an end of the dynasty and end of the Hindus and Sikhs in the State. There is an alternative possible for me and that is to withdraw the accession and that may kill the reference to the UNO, because the Indian Union will have no right to continue the proceedings before the Council, if the accession is withdrawn. The result may be return to the position the State held before the accession. The difficulty in that situation however, will be that the Indian troops .... have to work as volunteers to help the State. I am prepared to takeover command of my

own forces along with the forces of the Indian Army personally to help the State. I am prepared to lead the Army personally and to command if the Indian Union agrees, also their troops. I know my country much better than any of your generals will know it even during the next several months or years and I am prepared to take the venture boldly rather than merely keep on sitting here doing nothing. It is for you to consider whether the Indian Union will accept this in both the situations, whether after the withdrawal of the accession or even if the accession continues. I am tired of my present life and it is much better to die fighting than watch helplessly the heartbreaking misery of my people.

"Another alternative that strikes me is that if I can do nothing, I should leave the State (short of abdication) and reside outside so that people do not think that I can do anything for them. For their grievances they can hold the civil administration responsible or the Indian forces who are in charge of the defence of the State. The responsibility will then clearly be either the Indian Union or of the administration of Sheikh Abdullah. If there is any criticism, those responsible can have it and the responsibility for the suffering of the people will not be mine. Of course, I well anticipate that, as people started saying when I left Kashmir only on Mr. Menon's advice, that I had run away from Srinagar, they will say that I have left them in their hour of misery, but it is no use remaining in a position where one can do nothing merely to avoid criticism. Of course, if I go out of the State, I will have to take the public into confidence and tell them the reasons why I am going out.

"The third alternative in the situation that has arisen is that the Indian Dominion discharges its duty on the military side effectively and makes an all-out effort to stop the raids from Pakistan and to drive out of the State not only the raiders but also all rebels. This can only be done if the Dominion really fights. It has avoided fighting so far. Two or three courageous battles will more or less end this situation, and, if it is delayed, there is bound to be a catastrophe. Pakistan is more organised against Kashmir than the Indian Dominion, and as soon as snow melts it will start attacking Kashmir on all sides and the province of Ladakh will also come into the hands of the enemy and the Valley and the whole border will be raided and even double the number of troops at present in Jammu and Kashmir will not be able to save the situation. What should have been done and achieved a month before can still be achieved during the next month, but if matters are delayed and if owing to the UNO reference and the attitude of compromise, the situation remains at a standstill, it would become terribly grave after the expiry of the month. Therefore, unless the Indian Union makes up its mind to fight fully and effectively, I may have to decide upon the two alternatives mentioned above.

142.4.2 Sardar Patel's Advice

To this letter Sardar Patel replied on February 9, 1948, and said in the course of his reply: "I fully realise what an anxious time you must be having. I can assure you that I am no less anxious about the Kashmir situation and what is happening in the UNO, but whatever the present situation may be, counsel of despair is entirely out of place."

Source:
Converted Kashmir - Memorial of Mistakes
A Bitter Saga of Religious Conversion
Author: Narender Sehgal
Utpal Publications, 1994

142.5 U.N. RESOLUTION

The Resolution of the U.N. Security Council of August 13, 1948 to which Pakistan was a party but observed it only in its breach reads:

The United Nations Commission for India and Pakistan.

Having given careful consideration to the points of view expressed by the representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir; and

Being of the opinion that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Governments of India and Pakistan in effecting a final settlement of the situation;

Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal:

PART I: CEASE-FIRE ORDER

A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

B. The High Commands of the Indian and Pakistani forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir.

(For the purpose of these proposals forces under their control shall be considered to include all forces, organized and unorganized, fighting or participating in hostilities on their respective sides.)

C. The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the ceasefire.

D. In its discretion and as the Commission may find practicable, the Commission will appoint military observers who, under the authority of the Commission and with the co-operation of both Commands, will supervise the observance of the cease-fire order.

E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

PART II: TRUCE AGREEMENT

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion betwee n their representatives and the Commission .

A

1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

2. The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting.

3. Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission.

B

1. When the Commission shall have notified the Government of India that the tribesmen and Pakistani nationals referred to in Part II, A, 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistani forces are being

withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission.

2. Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order The Commission will have observers stationed where it deems necessary.

3. The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its powers to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

4. Upon signature, the full text of the truce agreement or a communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

PART III

Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

142.6 Agreement between Military Representatives of India and Pakistan regarding the establishment of a Cease-fire Line in the State of Jammu and Kashmir

(Annex 26 of UNCIP Third Report - S/1430 Add 1 to 3)

29 July, 1949

I. INTRODUCTION

A. The military representatives of India and Pakistan met together in Karachi from 18 July to 27 July l949 under the auspices of the Truce Sub-Committee of the United Nations Commission for India and Pakistan.

B. The members of the Indian delegation were: Lieutenant- General S.M. Shrinagesh, Major-General K.S Thimayya, Brigadier S.H.F.J. Manekshaw. As observers: Mr. H.M. Patel, Mr. V. Sahay.

C. The members of the Pakistan delegation were: Major-General W.J. Cawthorn, Major-General Nazir Ahmed, Brigadier M. Sher Khan. As observers: Mr. M. Ayub, Mr. A. A. Khan.

D. The members of the Truce Sub-Committee of the United Nations Commission for India and Pakistan were: Mr. Hernando Samper (Colombia), Chairman; Mr. William L.S. Williams (United States); Lieutenant-General Maurice Delvoie, Military Adviser, Mr. Miguel A. Marin, Legal Adviser.

II. AGREEMENT

A. Considering:

1. That the United Nations Commission for India and Pakistan, in its letter dated 2 July, 1949, invited the Governments of India and Pakistan to send fully authorised military representatives to meet jointly in Karachi under the auspices of the Commission's Truce Sub-Committee to establish a cease-fire line in the State of Jammu and Kashmir, mutually agreed upon by the governments of India and Pakistan;

2. That the United Nationals Commission for India and Pakistan in its letter stated that "The meeting will be for military purposes; political issues will not be considered," and that "They will be conducted without prejudice to negotiations concerning the truce agreement";

3. That in the same letter the United Nations Commission for India and Pakistan further stated that "The cease-fire line is a complement of the suspension of hostilities, which falls within the provisions of Part I of the resolution of 13 August, 1948 and can be considered separately from the questions relating to Part II of the same resolution";

4. That the governments of India and Pakistan, in their letters dated 7 July, 1949, to the Chairman of the Commission, accepted the Commission's invitation to the military conference in Karachi.

B. The delegations of India and Pakistan, duly authorised, have reached the following agreement:

1. Under the provision of Part I of the resolution of 13 August, 1948, and as a complement of the suspension of hostilities in the State of Jammu and Kashmir on 1 January, 1949, a cease-fire line is established.

2. The cease-fire line runs from Manawar in the south, north to Keran and from Keran east to the glacier area, as follows:

(a) The line from Manawar to the south bank of Jhelurn River at Urusa (inclusive to India) is the line now defined by the factual positions about which there is agreement between both parties. Where there has hitherto not been agreement, the line shall be as follows:

(i) in the Patrana area: Kohel (inclusive to Pakistan) north along the Khuwala Kas Nullah up to Point 2276 (inclusive to India), thence to Kirni (inclusive to India).

(ii) Khambha, Pir Satwan, Point 3150 and Point 3606 are inclusive to India, thence the line runs to the factual position at Bagla Gala, thence to the factual position at Point 3300.
(iii) In the area south of Uri the positions of Pir Kanthi and Ledi Gali are inclusive to Pakistan.

(b) From the north bank of the Jhelum River the line runs from a point opposite the village of Urusa (NL 972109), thence north following the Ballaseth Da Nar Nullah (inclusive to Pakistan), up to NL 973140, thence north-east to Chhota Qazinag (Point 10657 inclusive to India), thence to NM 010180, thence to NM 037210, thence to Point 11825 (NM 025354, inclusive to Pakistan), thence to Tutrnari Gali (to be shared by both sides, posts to be established 500 yards on either side of the Gali), thence to the north-west through the first "R" of Burji Nar to north of Gadori, thence straight west to just north of point 9870, thence along the black line north of Bijidhar to north of Batarasi, thence to just south of Sudhpura, thence due north to the Kathaqazinag Nullah, thence along the Nullah to its junction with the Grangnar Nullah, thence along the latter Nullah to Kajnwala Pathra (inclusive to India), thence across the Danna ridge (following the factual positions) to Richmar Gali (inclusive to India), thence north to Thanda Katha Nullah, thence north to the Kishansanga River. The line then follows the Kishanganga River up to a point situated between Fargi and Tarban, thence (all inclusive to Pakistan) to Bankoran. thence north-east to Khori, thence to the hill feature 8930 (in Square 9053), thence straight north to Point 10164 (in Square 9057), thence to Point 10323 (in Square 9161), thence north east straight to Guthur, then to Bhutpathra, thence to NL 980707, thence following the Bugina Nullah to the junction with the Kishanganga River at Point 4739. Thereafter the line follows the Kishanganga River to Keran and onwards to Point 4996 (NL 975818).

(c) From Point 4996 the line follows (all inclusive to Pakistan) the Famgar Nullah eastward to Point 12124, to Katware, to Point 6678. then to the north-east to Sarian (Point 11279), to Point 11837, to Point 13090 to Point 12641, thence east again to Point 11142, thence to Dhakki, thence to Poin: 11415, thence to Point 10301, thence to Point 7507, thence to Point 10685, thence to Point 8388, thence south-east to Point 11812. Thence the line runs (all inclusive to India), to Point 13220, thence across the river to the east to Point 13449 (Durmat), thence to Point 14586 (Anzbari), thence to Point 13554, thence to Milestone 45 on the Burzil Nullah, thence to the east to Ziankal (Point 12909), thence to the south-east to Point 11114, thence to Point 12216, thence to Point 12867, thence to the east to Point 11264, thence to Karo (Point 14985), thence to Point 14014, thence to Point 12089, thence following the track to Point 12879. From there the line runs to Point 13647 (Karobal Gali, to be shared by both sides). The cease-fire line runs thence through Retagah Chhish (Point 15316), thence through Point 15889, thence through Point 17392, thence through Point 16458, thence to Marpo La (to be shared by both sides), thence through Point 17561, thence through Point 17352, thence through Point 18400, thence through Point 16760, thence to (inclusive to India) Dalunang.

(d) From Dalunang eastwards the cease-fire line will follow the general line point 15495, Ishman, Manus, Gangam, Gunderman, Point 13620, Funkar (Point 17628), Marmak, Natsara, Shangruti (Point 1,531), Chorbat La (Point 16700), Chalunka (on the Shyok River), Khor, thence north to the glaciers. This portion of the cease- fire line shall be demarcated in detail on the basis of the factual position as of 27 July, 1949, by the local commanders assisted by United Nations military observers.

C. The cease-fire line described above shall be drawn on a one- inch map (where available) and then be verified mutually on the ground by local commanders on each side with the assistance of the United Nations military observers, so as to eliminate any no-man's land. In the event that the local commanders are unable to reach agreement, the matter shall be referred to the Commission's Military Adviser, whose decision shall be final. After this verification,

Done in Karachi on 27 July, 1949

For the Government of India:
S. M. Shrinagesh

For the Government of Pakistan:
J. Cawthorn
Major-General

For the United Nations Commission for India and Pakistan:
Hernando Samper
M. Delvoie

142.7 Text of Memorandum submitted by 14 Muslim leaders of India to Dr. Frank P. Graham, United Nations Representative

14 August, 1951

It is a remarkable fact that, while the Security Council and its various agencies have devoted so much time to the study of the Kashmir dispute and made various suggestions for its resolution, none of them has tried to ascertain the views of the Indian Muslims nor the possible effect of any hasty step in Kashmir, however well-intentioned, on the interests and well- being of the Indian Muslims. We are convinced that no lasting solution for the problem can be found unless the position of Muslims in Indian society is clearly understood.

Supporters of the idea of Pakistan, before this subcontinent was partitioned, discouraged any attempt to define Pakistan clearly and did little to anticipate the conflicting problems which were bound to arise as a result of the advocacy of the two-nation theory. The concept of Pakistan, therefore, became an emotional slogan with little rationale content. It never occurred to the Muslim League or its leaders that if a minority was not prepared to live with a majority on the sub- continent, how could the majority be expected to tolerate the minority.

It is, therefore, small wonder that the result of partition has been disastrous to Muslims. In undivided India, their strength lay about 100 million. Partition split up the Muslim people, confining them to the three isolated regions. Thus, Muslims number 25 million in Western Pakistan, 35 million to 40 million in India, and the rest in Eastern Pakistan. A single undivided community has been broken into three fragments, each faced with its own problems.

Pakistan was not created on a religious basis. If it had been, our fate as well as the fate of other minorities would have been settled at that time. Nor would the division of the sub- continent for reasons of religion have left large minorities in India or Pakistan.

This merely illustrates what we have said above, that the concept of Pakistan was vague, obscure, and never clearly defined, nor its likely consequences foreseen by the Muslim League, even when some of these should have been obvious.

When the partition took place, Muslims in India were left in the lurch by the Muslim League and its leaders. Most of them departed to Pakistan and a few who stayed behind stayed long enough to wind up their affairs and dispose of their property. Those who went over to Pakistan left a large number of relations and friends behind.

Having brought about a division of the country, Pakistan leaders proclaimed that they would convert Pakistan into a land where people would live a life according to the tenets of Islam. This created nervousness and alarm among the minorities living in Pakistan. Not satisfied with this, Pakistan went further and announced again and again their determination to protect and safeguard the interests of Muslims in India. This naturally aroused suspicion amongst the Hindus against us and our loyalty to India was questioned.

Pakistan had made our position weaker by driving out Hindus from Western Pakistan in utter disregard of the consequences of such a policy to us and our welfare. A similar process is in question in Eastern Pakistan from which Hindus are coming over to India in a large and large number.

If the Hindus are not welcome in Pakistan, how can we, in all fairness, expect Muslims to be welcomed in India ? Such a policy must inevitably, as the past has already shown, result in the uprooting of Muslims in this country and their migration to Pakistan where, as it became clear last year, they are no longer welcome, lest their influx should destroy Pakistan's economy.

Neither some of the Muslims who did migrate to Pakistan after partition, and following the widespread bloodshed and conflict on both sides of the Indo-Pakistan border in the north- west, have been able to find a happy asylum in what they had been told would be their homeland. Consequently some of them have had to return to India, e.g Meos who are now being rehabilitated in their former areas.

If we are living honorably in India today, it is certainly not due to Pakistan which, if anything, has by her policy and action weakened our pooition.

The credit goes to the broadminded leadership of India, to Mahatma Gandhi and Pandit Jawaharlal Nehru, to the traditions of tolerance in this country and to the Constitution which ensures equal rights to all citizens of India, irrespective of their religion caste, creed, colour or sex.

We, therefore, feel that, tragically as Muslims were misled by the Muslim League and subsquently by Pakistan and the unnecessary suffering which we and our Hindu brethren have to go through in Pakistan and in India since partition, we must be given an opportunity to settle down to a life of tolerance and understanding to the mutual benefit of Hindus and Muslims in our country - if only Pakistan would let us do it. To us it is a matter of no smaller onsequence.

Despite continuous provocations, first from the Muslim League and since then from Pakistan, the Hindu majority in India has not thrown us or members of other minorities out of Civil Services, Armed Forces, the judiciary, trade, commerce, business and industry. There are Muslim Ministers in the Union and State cabinets, Muslim Governors, Muslim Ambassadors, representing India in foreign countries, fully enjoying the confidence of the Indian nation, Muslim members in Parliament and state legislatures, Muslim judges serving on the Supreme Court and High Courts, high-ranking officers in the Armed Foroes and the Civil services, including the police. Muslims have large landed estates, run big business and commercial houses in various parts of the country, notably in Bombay and Calcutta, have their shares in industrial production and enterprise in export and import trade. Our famous sacred shrines and places of cultural interest are mostly in India.

Not that our lot is certainly happy. We wish some of the state Governments showed a little greater sympathy to us in the field of education and employment. Nevertheless, we feel we have an honourable place in India. Under the law of the land, our religious and cultural life is protected and we shall share in the opportunities open to all citizens to ensure progress for the people of this country.

It is, therefore, clear that our interest and welfare do not coincide with Pakistan's conception of the welfare and interests of Muslims in Pakistan.

This is clear from Pakistan's attitude towards Kashmir. Pakistan claims Kashmir, first, on the ground of the majority of the State's people being Muslims and, secondly, on the ground, of the state being essential to its economy and defence. To achieve its objective it has been threatening to launch "Jehad" against Kashmir in India.

It is a strange commentary on political beliefs that the same Muslims of Pakistan who like the Muslims of Kashmir to join them invaded the state, in October 1947, killing and plundering Muslims in the state and dishonouring Muslim women, all in the interest of what they described as the liberation of Muslims of the State. In its oft-proclaimed anxiety to rescue the 3 million Muslims from what it describes as the tyranny of a handful of Hindus in the State, Pakistan evidently is prepared to sacrifice the interests of 40 million Muslims in India - a strange exhibition of concern for the welfare of fellow- Muslims. Our misguided brothers in Pakistan do not realise that if Muslims in Pakistan can wage a war against Hindus in Kashmir why should not Hindus, sooner or later, retaliate against Muslims in India.

Does Pakistan seriously think that it could give us any help if such an emergency arose or that we would deserve any help thanks to its own follies ? It is incapable of providing room and livelihood to the 40 million Muslims of India, should they migrate to Pakistan. Yet its policy and action, if not changed soon, may well produce the result which it dreads.

We are convinced that India will never attack our interests. First of all, it would be contrary to the spirit animating the political movement in this country. Secondly, it would be opposed to the Constitution and to the sincere leadership of the Prime Minister. Thirdly, India by committing such a folly would be playing straight into the hands of Pakistan.

We wish we were equally convinced of the soundness of Pakistan's policy. So completely oblivious is it of our present problems and of our future that it is willing to sell us into slavery - if only it can secure Kashmir.

It ignores the fact that Muslims in Kashmir may also have a point of view of their own, that there is a democratic movement with a democratic leadership in the State, both inspired by the progress of a broad minded, secular, democratic movement in India and both naturally being in sympathy with India. Otherwise, the Muslim raiders should have been welcomed with open arms by the Muslims of the State when the invasion took place in 1947.

Persistent propaganda about "Jehad" is intended, among other things, to inflame religious passions in this country. For it would, of course, be in Pakistan's interests to promote communal rioting in India to show to Kashmiri Muslims how they can find security only in Pakistan. Such a policy, however, can only bring untold misery and suffering to India and Pakistan generally and to Indian Muslims particularly.

Pakistan never tires of asserting that it is determined to protect the interests of Muslims in Kashmir and India. Why does not Pakistan express the same concern for Pathans who are fighting for Pakhtoonistan, an independent homeland of their own ? The freedom-loving Pathans under the leadership of Khan Abdul Gaffar Khan and Dr. Khan Sahib, both nurtured in the traditions of democratic tolerance of the Indian National Congress, are being subjected to political repression of the worst possible kind by their Muslim brethren in power in Pakistan and in the NWFP. Contradictory as Pakistan's policy generally is, it is no surprise to us that while it insists on a fair and impartial plebiscite in Kashmir, it denies a fair and impartial plebiscite to Pathans.

Pakistan's policy in general and her attitude towards Kashmir is particular thus tend to create conditions in this cauntry which in the long run can only bring to us Muslims widespread suffering and destruction. Its policy prevents us from settling down, from being honourable citizens of a State, free from suspicion of our fellow-countrymen and adapting ourselves to changing conditions to promote the interests and welfare of India. Its sabre-rattling interferes with its own economy and ours. It expects us to be layal to it despite its importance to give us any protection, believing at the same time that we can still claim all the rights of citizenship in a secular democracy.

In the event of a war, it is extremely doubtful whether it will be able to protect the Muslims of East Bengal who are completely cut off from Western Pakistan. Are the Muslims of India and Eastern Pakistan who sacrifice themselves completely to enable the 25 million Muslims in Western Pakistan to embark upon mad, self-destructive and adventures?

We should, therefore, like to impress upon you with all the emphasis at our command that Pakistan's policy towards Kashmir is fraught with the gravest peril to the 40 million Muslims of India. If the Security Council is really interested in peace human brotherhood, and international understanding, it should heed this warning while there is still time.

Dr. Zakir Hussain
(Vice Chancellor Aligarh University)

Sir Sultan Ahmed
(Former Member of Governor General's Executive Council)

Sir Mohd. Ahmed Syed Khan
(Nawab of Chhatari, former acting
Governor of United Provinces and
Prime Minister of Hyderabad)

Sir Mohd. Usman
(Former member of Governor
General's Executive council and
acting Governor of Madras)

Sir Iqbal Ahmed
(Former Chief Justice of Allahabad High Court)

Sir Fazal Rahimtoola
(Former Sheriff of Bombay)

Maulana Hafz-ur-Rehman M.P.
Col. B.H. Zaidi M.P.

Nawab Zain Yar Jung
(Minister Gcvernment of Hyderabad)

A.K. Kawaja
(Former President of Muslim Majlis)

T.M. Zarif
(General Secretary West Bengal Bohra Community)

Source:
Converted Kashmir - Memorial of Mistakes
A Bitter Saga of Religious Conversion
Author: Narender Sehgal
Utpal Publications, 1994

142.8 ARTICLE 370 OF THE INDIAN CONSTITUTION

Temporary provisions with respect to the State of Jammu and Kashmir

(1) Notwithstanding anything in this Constitution,

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to,

(i) those matters in the Union List and the Concurrent List which, in consultation with the Govermnent of the State are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws far that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation For the purposes of this article, the Govermnent of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March. 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may. by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

In exercise of the powers conferred by Article 370 the Prseident, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that as from the 17th Day of November, 1952, the said Article 370 shall be operative with the modification that for the Explanation in Cl. (1) thereof, the following explanation is substituted namely.

"Explanation - For the purpose of this article, the Government of the State means the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the **Sadr-i-Riyasat** (now Governor) of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office."

(Ministry of Law order No. C. O. dated 15th Nov. 1952.)

142.9 Sino-Pakistan Frontier Agreement

1963

Below is the text of the Sino-Pak Border agreement 1963 through which Pakistan illegally ceded 1/3rd of the territory of Jammu and Kashmir to China.

The Government of the People's Republic of China and the Government of Pakistan;

HAVING agreed, with a view to ensuring the prevailing peace and tranquility on the border, to formally delimit and demarcate the boundary between China's Sinking and the contiguous areas the defence of which is under the actual control of Pakistan, in a spirit of fairness, reasonableness, mutual understanding and mutual accommodation, and on the basis of the ten principles as enunciated in the Bandung conference.

Being convinced that this would not only give full expression to the desire of the people of China and Pakistan for the development of good neighbourly and friendly relations, but also help safeguard Asian and world peace. Have resolved for this purpose to conclude the present agreement and have appointed as their respective plenipotentiaries the following.

For the Government of the People's Republic of China; Chen Yi, Minister of Foreign Affairs. For the Government of the Pakistan Zulfikar Bhutto, Minister of External Affairs. Who, having mutually examined their full powers and found them to be in good and due form have agreed upon following:

Article 1

In view of the fact that the boundary between China's Sinkiang and the contiguous areas the defence of which is under the actual control of Pakistan has never been formally delimited, two parties agree to delimit it on the basis of the traditional customary boundary line including features and in a spirit of equality, mutual benefit and friendly cooperation.

Article 2

In accordance with the principle expounded in Article 1 of the present agreement, the two parties have fixed as follows the alignment of the entire boundary line between China's Sinkiang and the contiguous areas the defence of which is under the actual control of Pakistan.

1) Commencing from its north western extremity at height 5,630 metres (a peak the reference coordinates of which are approximately longitude 74 degrees 34 minutes east and latitude 37 degrees 3 minutes north), the boundary line runs generally eastward and then South-eastward strictly along the main watershed between the tributaries of the Tashkurgan river of the Tarim river system on the one hand on the tributes of the Hunza river of the Indus river system on the other hand, passing through the Kilik Daban (Dawan), the Mintake Daban (pass), the Kharchanai Daban (named on the Chinese map only), the Mutsgila Daban (named on the Chinese map only) and the Parpik Pass (named on the Pakistan map only) and reaches the Khunjerab (Yutr Daban (Pass).

2) After passing through the Kunjerab (Yutr) Daban (pass) the boundary line runs generally southward along the above-mentioned main watershed upto a mountain-top south of the Daban (pass), where it leaves the main watershed to follow the crest of a spur lying generally in a south-easterly direction, which is the watershed between the Akjilga river (a nameless corresponding river on the Pakistan map) on the one hand, and the Taghumbash (Oprang) river and the Koliman Su (Orang Jilga) on the other hand. According to the map of the Chinese side, the boundary line, after leaving the south-eastern extremity of the spur, runs along a small section of the middle line of the bed of the Koliman Su to reach its confluence with the Elechin river. According to the map of the Pakistan side, the boundary line, after leaving the south-eastern extremity of this spur, reaches the sharp bend of the Shaksgam of Muztagh river.

3) From the aforesaid point, the boundary lines runs up the Kelechin river (Shaksgam or Muztagh river) along the middle line of its bed its confluence (reference coordinates approximately longitude 76 degrees

2 minutes east and latitude 36 degrees 26 minutes north) with the Shorbulak Daria (Shimshal river or Braldu river).

4) From the confluence of the aforesaid two rivers, the boundary line, according to the map of the Chinese side, ascends the crest of a spur and runs along it to join the Karakoram range main watershed at a mountain-top (reference coordinates approximately longitude 75 degrees 54 minutes east and latitude 36 degrees 15 minutes north) which on this map is shown as belonging to the Shorgulak mountain. According to the map of the Pakistan side, the boundary line from the confluence of the above mentioned two river ascends the crest of a corresponding spur and runs along it, passing through height 6.520 meters (21,390 feet) till it joins the Karakoram range main watershed at a peak (reference coordinates approximately longitude 75 degrees 57 minutes east and latitude 36 degrees 3 minutes north).

5) Thence, the boundary line, running generally south-ward and then eastward strictly follows the Karakoram range main watershed which separates the Tarim river drainage system from the Indus river drainage system, passing through the east Mustagh pass (Muztagh pass), the top of the Chogri peak (K-2) the top of the broad peak, the top of the Gasherbrum mountain (8,068), the Indirakoli pass (names of the Chinese maps only) and the top of the Teramn Kankri peak, and reaches its south-eastern extremity at the Karakoram pass. Then alignment of the entire boundary line as described in section one of this article, has been drawn on the one million scale map of the Pakistan side in English which are signed and attached to the present agreement. In view of the fact that the maps of the two sides are not fully identical in their representation of topographical features the two parties have agreed that the actual features on the ground shall prevail, so far as the location and alignment of the boundary described in section one is concerned, and that they will be determined as far as possible by bgint survey on the ground.

Article 3

The two parties have agreed that:

i) Wherever the boundary follows a river, the middle line of the river bed shall be the boundary line; and that

ii) Wherever the boundary passes through a deban (pass) the water-parting line thereof shall be the boundary line.

Article 4

One the two parties have agreed to set up, as soon as possible, a joint boundary demarcation commission. Each side will appoint a chairman, one or more members and a certain number of advisers and technical staff. The joint boundary demarcation commission is charged with the responsibility in accordance with the provisions of the present agreement, to hold concrete discussions on and carry out the following tasks jointly.

1) To conduct necessary surveys of the boundary area on the ground, as stated in Article 2 of the present agreement so as to set up boundary markers at places considered to be appropriate by the two parties and to delineate the boundary line of the jointly prepared accurate maps. To draft a protocol setting forth in detail the alignment of the entire boundary line and the location of all the boundary markers and prepare and get printed detailed maps, to be attached to the protocol, with the boundary line and the location of the boundary markers shown on them.

2) The aforesaid protocol, upon being signed by representatives of the governments of the two countries, shall become an annex to the present agreement, and the detailed maps shall replace the maps attached to the present agreement.

3) Upon the conclusion of the above-mentioned protocol, the tasks of the joint boundary demarcation commission shall be terminated.

Article 5

The two parties have agreed that any dispute concerning the boundary which may arise after the delimitation of boundary line actually existing between the two countries shall be settled peacefully by the two parties through friendly consultations.

Article 6

The two parties have agreed that after the settlement of the Kashmir dispute between Pakistan and India, the sovereign authority concerned will reopen negotiations with the Government of the People's Republic of China on the boundary as described in Article. Two of the present agreement, so as to sign a formal boundary treaty to replace the present agreement, provided that in the event of the sovereign authority being Pakistan, the provisions of the present agreement and of the aforesaid protocol shall be maintained in the formal boundary treaty to be signed between the People's Republic of China and Pakistan.

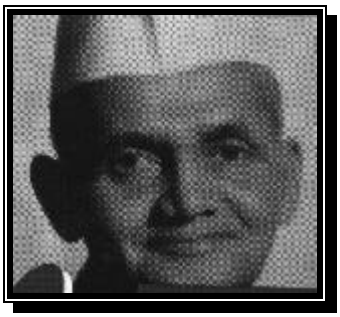
Article 7

The present agreement shall come into force on the data of its signature.

Done in duplicate in Peking on the second day of March 1963, in the Chinese and English languages, both side being equally authentic.

142.10 Tashkent Declaration

January 10, 1966



Lal Bahadur Shastri

The Prime Minister of India and the President of Pakistan, having met at Tashkent and having discussed the existing relations between India and Pakistan hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of the 600 million people of India and Pakistan.

(i) The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighborly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means. They considered that the interests of peace in their region and particularly in the Indo-Pakistan subcontinent and indeed, the interests of the peoples of India ad Pakistan were not served by the continuance of tension between the two countries. It was against this background that Jammu & Kashmir was discussed, and each of the sides set forth its respective position.

Troops Withdrawal

(ii) The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than 25 February 1966 to the positions they held prior to 5 August 1965, and both sides shall observe the cease-fire terms on the cease-fire line.

(iii) The Prime Minister of India and the President of Pakistan have agreed that relations between India and Pakistan shall be based on the principle of non-interference in the internal affairs of each other.

(iv) The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country and will encourage propaganda which promotes the development of friendly relations between the two countries.

(v) The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of India to Pakistan and the High Commissioner of Pakistan of India will return to their posts and that the normal functioning of diplomatic missions of both countries will be restored. Both Governments shall observe the Vienna Convention of 1961 on Diplomatic Intercourse.

Trade Relations

(vi) The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications as well as cultural exchanges between India and Pakistan, and to take measures to implement the existing agreement between India and Pakistan.

(vii) The Prime Minister of India and the President of Pakistan have agreed that they will give instructions to their respective authorities to carry out the repatriation of the prisoners of war.

(viii) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue the discussions of questions relating to the problems of refugees and eviction of illegal immigrations. They also agreed that both sides will create conditions which will prevent the exodus of people. They further agree to discuss the return of the property and assets taken over by either side in connection with the conflict.

Soviet Leaders Thanked

(ix) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue meetings both at highest and at other levels of matters of direct concern to both countries. Both sides have recognized the need to set up joint Indian-Pakistani bodies which will report to their Governments in order to decide what further steps should be taken.

(x) The Prime Minister of India and the President of Pakistan record their feelings, deep appreciation and gratitude to the leaders of the Soviet Union, the Soviet Government and personally to the Chairman of the Council of Ministers of the USSR for their constructive, friendly and noble part in bringing about the present meeting which has resulted in mutually satisfactory results. They also express to the Government and friendly people of Uzbekistan their sincere thankfulness for their overwhelming reception and generous hospitality.

They invite the Chairman of the Council of Ministers of the USSR to witness this declaration.

Prime Minister of India	President of Pakistan
Lal Bahadur Shastri	**Mohammed Ayub Khan**

Tashkent, January 10, 1966

142.11 Simla Agreement
July 2, 1972

The Prime Minister of India and the President of Pakistan signing the Shimla Agreement.

1. The Government of India and the Government of Pakistan are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the subcontinent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

In order to achieve this objective, the Government of India and the Government of Pakistan have agreed as follows:

(i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries;

(ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance of encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations;

(iii) That the prerequisite for reconciliation, good neighborliness and durable peace between them is a commitment by both the countries to peaceful co-existence, respect for each other's territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;

(iv) That the basic issues and causes of conflict which have bedeviled the relations between the two countries for the last 25 years shall be resolved by peaceful means;

(v) That there shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;

(vi) That in accordance with the Charter of the United Nations they will refrain from the threat of use of force against the territorial integrity or political independence of each other.

2. Both Governments will take steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them.

3. In order progressively to restore and normalize relations between the two countries step by step, it was agreed that:

(i) Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts, and air links including overflights.

(ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country.
(iii) Trade and cooperation in economic and other agreed fields will be resumed as far as possible.
(iv) Exchange in the fields of science and culture will be promoted.

In this connection delegations from the two countries will meet from time to time to work out the necessary details.

4. In order to initiate the process of establishment of durable peace, both the Governments agree that:

(i) Indian and Pakistani forces shall be withdrawn to their side of the international border.
(ii) In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat or the use of force in violation of this Line.
(iii) The withdrawals shall commence upon entry into force of this Agreement and shall be completed within a period of 30 days thereof.

5. This Agreement will be subject to ratification by both countries in accordance with their respective constitutional procedures and will come into force with effect from the date on which the Instruments of ratification are exchanged.

6. Both Governments agree that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalization af relations, including the questions of repatriation of prisoners of war and civilian interests, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.

(**Indira Gandhi**)	(**Zulfikar Ali Bhutto**)
Prime Minister	President
Republic of India	Islamic Republic of Pakistan

Simla, the 2nd July, 1972

142.12 Kashmir Accord
November 13, 1974

Indira Gandhi

Sheikh Mohammad Abdullah

Agreed conclusions which led to Sheikh Mohammad Abdullah's accord with Mrs. Indira Gandhi, Prime Minister, and his subsequent assumption of office as Chief Minister in February 1975:

1 . The State of Jammu and Kashmir which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India.

2. The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.

3. Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications, such adaptations and modifications can be altered or repealed by an order of the President under Article 370, each individual proposal in this behalf being considered on its merits; but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.

4. With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures cultural matters, social security, personal law and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to laws to be made by Parliament in future under the Proviso to clause 2 of the Article. The State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration

5. As an arrangement reciprocal to what has been provided under Article 368, a suitable modification of that Article as applied to the State should be made by Presidential order to the effect that no law made by the Legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of Constitution of the State of Jammu and Kashmir relating to any of he under mentioned matters, shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent; the matters are:

(a) the appointment, powers, functions, duties, privileges and immunities of the Governor, and

(b) the following matters relating to Elections namely, the superintendence, direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without

discrimination, adult suffrage and composition of the legislative Council, being matters specified in sections 138, 139 140 and 50 of the Constitution of the State of Jammu and Kashmir.

6. No agreement was possible on the question of nomenclature of the Governor and the Chief Minister and the matter is therefore, remitted to the Principals.

Mirza Mohammad Afzal Beg

G. Parthasarathi

New Delhi, November 13, 1974

142.13 Parliament Resolution

February 22, 1994

"**This** House"

note with deep concern Pakistan's role in imparting training to the terrorists in camps located in Pakistan and Pakistan Occupied Kashmir, the supply of weapons and funds, assistance in infiltration of trained militants, including foreign mercenaries into Jammu and Kashmir with the avowed purpose of creating disorder, disharmony and subversion:

reiterates that the militants trained in Pakistan are indulging in murder, loot and other heinous crimes against the people, taking them hostage and creating an atmosphere of terror;

Condemns strongly the continued support and encouragement Pakistan is extending to subversive and terrorist activities in the Indian state of Jammu & Kashmir;

Calls upon Pakistan to stop forthwith its support to terrorism, which is in violation of the Simla Agreement and the internationally accepted norms of inter-State conduct and is the root cause of tension between the two countries reiterates that the Indian political and democratic structures and the Constitution provide for firm guarantees for the promotion and protection of human rights of all its citizens;

regard Pakistan's anti-India campaign of calumny and falsehood as unacceptable and deplorable.

notes with deep concern the highly provocative statements emanating from Pakistan urges Pakistan to refrain from making statements which vitiate the atmosphere and incite public opinion;

expresses regret and concern at the pitiable conditions and violations of human rights and denial of demoractic freedoms of the people in those areas of the Indian State of Jammu and Kashmir, which are under the illegal occupation of Pakistan;

On behalf of the People of India,

Firmly declares that-

(a) The State of Jammu & Kashmir has been, is and shall be an integral part of India and any attempts to separate it from the rest of the country will be resisted by all necessary means;

(b) India has the will and capacity to firmly counter all designs against its unity, sovereignty and territorial integrity;

and demands that -

(c) Pakistan must vacate the areas of the Indian State of Jammu and Kashmir, which they have occupied through aggression; and resolves that -

(d) all attempts to interfere in the internal affairs of India will be met resolutely."

The Resolunion was unanimously adopted. Mr. Speaker: The Resolution is unanimously passed.

February 22, 1994